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A DIGEST ON HIGH COURT DECISIONS

ON

MALABAR LAW AND USAGE.

(INCLUDING THE REPORTED CASES FROM 1862 TO 1893.)

BY

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SECOND GRADE PLEADER,

CALICUT

—:○:—

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CALICUT

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B

TO

RALPH S. BENSON, Esq., M. A. L L. B.,

BARRISTER-AT-LAW,

District and Sessions Judge

OF

SOUTH MALABAR.

THIS COMPILATION

IS,

(WITH PERMISSION)

RESPECTFULLY

DEDICATED.

C

ERRATA

Page 12, line 3, omit "on"
,, 16, last line read "duty on" for "duty".
,, 18, line 23, read " an heir" for "a heir".
,, 23, line 33, read "unable" for "enable".
,, 27, line 29,read "position" for "possession".
,, 34, line 4, omit "it".
,, 36, line 3, Insert "signature" after "Anandiraven's"
,, 41, line 3, read "290, followed" for"260, allowed".
,, 44, line 14, read "was made in" for "made was"
,, 55, line 2, read "several distinct" for "distinct several"

D

PREFACE.

The compiler had in the beginning no idea of publishing this compilation of his, which was made for himself. It afterwards struck him that a publication of it would be of use, especially to the legal profession. Of course, the work has no pretentions whatever to originality. What the compiler has done is simply to collect the decisions and arrange them under various heads, adding to the same an index for easy reference.

If sufficient encouragememt is given, the compiler proposes to publish at intervals—supplementing, and in continuation of, this work—digests of decisions which may hereafter be passed by the High Court.

November 1894.

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7 I

A DIGEST OF HIGH COURT DECISIONS

ON

MALABAR LAW AND USAGE.

Adoption.

1. ———According to Marumakkattayam law, adoption of a female makes any children born of her after adoption members of the adopting family. (*Eliyangattil Rajah* v. *Punnuathur Devaki Valia Rani,* S. A. 208 of 1885).

2. ——— Adoption is no transaction which can be arbitrarily set aside after it has once been made. (*Dharmangadan Nambiar* v. *Unni Madhavi Amma,* A. S. 1 & 2 of 1890.)

Alienation.

1. ——— Lands attached to a "Sthanam" are, unless the contrary be specially proved in any particular case, liable to alienation and charge, at all events, for the payment of debts incurred for the conservation of the Sthanam. (*Chemminikara Muppil Nair* v. *Kiliyanat Ukona Menon,* 1.M. 88.)

2. ——— The authority of a Karanaven to make alienations of the immoveable property of the Tarwad stands on a different footing from his power to pledge the credit of the Tarward. The Karanaven is not the agent of the family to make alienations, but must have special authority in each case. There is no invariable presumption on whom the burden of proof lies as to the necessity of a loan made to the Karanaven. If it is sought to make a decree in a suit binding on a Tarwad, the procedure laid down in Section 30 of the Civil Procedure Code, 1877, should be followed, if the members are numerous.

A decree against a person who happens to be a Karanaven, is not necessarily binding on the Tarwad in the absence of fraud.

If in execution of a money decree obtained against a person, who happens to be the Karanaven, the Tarwad property is attached and sold, a pruchaser at an auction sale obtains nothing, and in such case the question whether the purchase was made *bona-fide* and for value is not material. (*Kombi* v. *Lak shmi,* 5 .M .201.)

3. ——— Alienation by a Karanaven whose powers are restricted by a family arrangement. See below under "Karanaven"s *Kanna Pisharodi* v. *Kombi Achen,* 8.M. 381.

4. ———There is no rule of Malabar Law that the assent of every member of a Tarwad is necessary to render valid the alienation of Tarwad property. (*Kalliyani* v. *Narayana,* 9 M. 266.)

5. ——— The onus of proving necessity for the alienation as against the Tarwad, lies in the first case on the alienee; but it may be shifted to the other side when special circumstances exist, as in this case, accompanied by a holding for 25 years.-(*Vanganat Dhatri Vali Amma* v. *Venkitachalam Patter,* S. A. 383 of 1890.)

Devaswam.——A. Karaima.

1. ——— The vendee of a Karaima right cannot compel the trustees of a pagoda to admit him to the office and give him the emoluments. (*Keyake Ilat Kotel Kanni* v. *Yadattil Vellayangot Achuda Pisharodi,* 4 M. H. C. R. 380.)

2. ——— Temple lands held on karaima or service tenure are inseparable from the service, and, on failure of heirs in the grantee's family are resumable by the grantor. (S. A. 850 of 1881).

3. ——— A hereditary office in a temple belonging to an extinct Tarwad devolves on the Attalatakkam Dayadies; failing which, the property attached to the office lapses to the Devaswam. (S. A. 850 of 1881.)

B. Samudayam.

1. ——— Plaintiff, alleging himself to be "Karaima Samudayam" of the Malamal Ayyappan Devaswam, sued to redeem lands which had been mortgaged by the Devaswam. *Held,* that he was not entitled to maintain the suit, that the Uralers are the persons in whom the estate and property of the temple is vested, and that the plaintiff was an agent accountable to the Uralers and subject to be dismissed by them for mischief. (*Kunjunneri Nambiar v. Nilakandan,* 2 M 167.)

2. ——— A "Karayma Samudayam" of a Devaswam is merely an agent or manager, with a proprietary and heriditary right in his office. The ownership of the property of the Devaswam is vested in the Uralers, who are the proper parties to sue the tenants of the Devaswam lands. (*P. K. Unni Nambiar* v. *C. M. Nilakandan Bhattathiripad*, 4. M. 141.)

C. Uralers.

1. ——— The Uralers have no right to alienate trust-property but they may create subordinate tenures in accordance with local usage. (S. A. 10 of 1847).

2. ——— Uralers may grant Karaima Jenm of Devaswam lands (S. A. 74 of 1860.)

3. ——— Lands attached to a family pagoda are alienable as any other private property. (Sader Decision, 90 of 1862.)

4. ——— When the Uralers were four Tarwads:- *Held*, that a sale of the Uraima right by one Tarwad without the consent of the others was altogether invalid, and that the vendee could not redeem a kanom mortgage of the Devaswam land, though the mortgagor was Karanaven of the Tarwad which assumed to sell the Uraima right. (*Ukanda Variyar* v. *Raman Nambudri*, 1 M. H. C. R. 262.)

5. ——— *Held*, that the Uralers cannot lawfully alienate the trust property subject to all the trusts attaching to it. (*Rajah Rajah Varma Valia Rajah of Cherakal Kovilagam* v. *Kottayath Kiyaki Kovilagath Revi Varma Mootha* Rajah, 7 M. H. C. R. 210.)

6. ——— If the right of management has for years resided in the family of one Uralen, the Courts will presume that it is with the assent of the other Uralers, and will be slow to disturb the arrangement at the suit of another Uralen. It may, ofcourse, be shown that the delegation was temporary or personal to an individual and ceased with his death. (S. A. 128 of 1879.)

7. ——— An Uralen may sue his Co-uralen who is also appointed agent, for the recovery of surplus income in his hands. The Co-uralen does not lose his title as trustee by the fact of his being an agent; and he may request the Court to have the surplus deposited therein on the joint account of both the Uralers as trustees of the Devaswam and to be invested in their joint names or paid out of their joint receipt, as the Court executing the decree may think proper. (S. A. 211 of 1879.)

8. ——— An assignee by gift of Uraima right failing in a declaratory suit to establish his right to Uraimaship, but having his possessory title to the temple recognised, is not, on the strength of the latter title, entitled to redeem Devaswam lands. (A. S. 16 of 1880.)

9. ——— Payment of rent to a co-uralen is sufficient answer to a suit for rent against a tenant by the other Uralen. (S. A. 470 of 1880.)

10. ——— Uralers sued to recover Devaswam property. Defendant set up adverse possession and limitation, and claimed refund of money paid by him to obtain surrender of the lands from the original tenants. *Held*, that Defendant had in fact possession from 1809 to 1874 as Uralen, and that the subsequent declaration by a Court against his Uraima right did not render his previous possession adverse, nor extinguish his right to repayment of the payment of money made by him for surrender, though the suit to redeem the kanom of 1809 may be barred. (S. A. 250 of 1881.)

11. ——— Urima right cannot be mortgaged. (S. A. 624 of 1882.)

12. ——— A transfer of the right to manage a temple and its lands by way of lease for a sum of money is illegal. (*Rama Varma Tamburan* v. *Raman Nair*, 5 M. 89.)

13. ——— An agreement by the majority of the Uralers to increase the number of the Uralers is not binding on a dissentient minority. (*Narayanen* v *Sridharan*, 5. M.65.)

14. ——— In a suit by the trustees to remove the Defendant from the management of certain temples, a decree for mesne profits was passed against the defendant, who was the Karanaven of a Tarwad. *Held*, that the Tarwad property in the hands of the deceased defendant's successor was not assets of the deceased in the hands of his successor liable to satisfy the decree under Section 234, Civil Procedure Code, 1877. (*Ravi Varma* v *Koman*, 5 M. 223.)

15. ——— Where the majority of the Uralers agreed to renew a kanom on terms beneficial to the Devaswam after the question of the renewal had been fairly considered by all the Uralers: *Held*, that the decision of the majority was binding upon a dissentient minority. (*Teramath* v *Lakshmi*, 6. M. 270.)

16. ——— Where the Uraima right over a certain Devaswam was vested in 5 trustees representing different Illoms, and a suit was brought by one of the trustees to recover certain property alleged to have been illegally alienated by three other trustees to a stranger and dismissed: *Held,* that the decree in such suit was a bar to a second suit brought for the same purpose by the fifth trustee, who had not been a party to the former suit, on the ground that he must be deemed to claim under the Plaintiffs in the former suit within the meaning of Sec. 13 Expl.V of the Code of Civil Procedure, 1882 (*Madhavan* v *Keshaavn,* 11 M. 191.)

17. ——— One of the 2 Uralers brought a suit to recover Devaswam property on a Pattamchit executed by the 1st Defendant to the Plaintiff. The other Uralen was examined as a witness on behalf of the Plaintiff and stated that the Plaintiff had been in possession for some years and receiving rent. *Held,* that in the absence of any notice from the co-uralen not to pay rent or surrender the land to the Plaintiff, the objection that the suit must fail on the ground that the co-uralen was not joined as a party should not prevail. (*Kandu* v *Divakaran Nambudiripad,* S. A. 12 of 1887.)

18. ——— The trustee of a Devaswam, who had succeeded to his office in June 1883 sued in 1887 to recover for the Devaswam possession of land which had been demised on kanom by his predecessor in February 1881, on the ground that the demise was invalid as against the Devaswam. The Defendant had been in possession of the land for more than 12 years, falsely asserting the title of the Kanomdar with the permission of the Plaintiff's predecessor in office *Held* (1) the suit was not barred by limitation, (2) the Plaintiff was entitled to maintain the suit for the purpose of recovering, for the trusts of the Devaswam, property improperly alienated by his predecessor. *Suppammal* v *The Collector of Tanjore,* 12 Mad 387, distinguished. (*Vedapuratti* v *Vallabha,* 13 Mad 402.)

19. ——— The Uraima right in a Devaswam was vested in the Illom, of which plaintiff No 1, a Nambudri, was a member. The Defendants represented the faimly which formerly ruled over the tract of country where the Devaswam was situated. The plaintiffs sued for a declaration that their families were entitled to the exclusive management of the affairs of the Devaswam. It appeared that the

plaintiffs' and defendants' families had been in joint enjoyment since 1845 in accordance with the provisions of a deed of compromise. *Held*, (1) that the compromise was binding on the plaintiff, on its appearing that the compromise had been entered into by the Karanaven of the plaintiffs' Illom and that the compromise was not vitiated by fraud or the like.

(2) that the claim to exclusive management was barred by limitation (Kachankuruishi Devaswam case. *Nilakandan* v. *Padmanabha*, 14. M. 153.)

The question of the Melkoima discussed in this case and in the Guruvayur .Devaswam case, *Zamorin of Calicut* v. *Krishnan*, A. S. 35 of 1887

20- ——— The junior members of a Tarwad sued their Karanaven and others in the Subordinate Court, praying for a declaration of the Uraima right of their Tarwad in a certain Devaswam, and for an injunction to restrain the defendants, other than the members of the Plaintiffs' Tarwad, from executing a decree of a District Court, passed on appeal from a Munsiff's Court, whereby certain lands of the Devaswam were decreed to be surrendered to them in the character of Uralers. It appeared (1) that the Plaintiffs' Karanaven was a party to the suit in which the above decree was passed, (2) that the Plaintiffs' Tarwad was otherwise entitled to the Uraima right by adverse possession, if not immemorial title. *Held*, (1) that the Plaintiffs were entitled to maintain the suit without proof of fraud or collusion on the part of their Karanaven in the previous suit, (2) that the injunction sought was not precluded by Specific Relief Act, Sec- 56 (b); (3) that the Plaintiffs are entitled to the decree as prayed. (*Appu* v. *Raman*, 14. M. 425.)

21. ——— In a suit by one of two co-uralers to recover land, the property of the Devaswam, the other Uralen being joined as Defendant, there was no evidence that the latter had repudiated the right of the plaintiff to sue in conjunction with him, and it appeared that he had not been consulted as to the institution of the suit:- *Held*, that the suit was bad for non-joinder of the Co-uralen as Plaintiff. (*Parameswaran* v. *Shangaran*, 14. .M. 489.)

Forest.

1. ——— In the District of Malabar and the tracts administered as part of it, there is no presumption that forest lands are the

property of the Crown. According to the Hindu law a right to the possession of land is acquired by the first person who makes a beneficial use of the soil, the right of the sovereign being to assess the occupier to revenue.

Assuming that the crown has the right to oust any person who, without sanction, occupies waste land which has not been appropriated for any public purpose, it cannot, by a suit brought for a declaration of title, or for ejectment, the date at which the cause of action arose not being stated in the plaint, compel a Defendent to prove possession for 60 years.

As a general rule, a plaintiff must not only show he has a title, but he has a subsisting title, which he has not lost by the prescriptive Sections of the Limitation Act.

The probable explanation of the ruling in *Radha Gobind Roy's case*, Suth. P. C. cases, 809 is that when a Plaintiff proves title and possession, it is to be presumed that his possession continues till the Defendent proves that the possession was interrupted; but that where the Plaintiff can prove title only, and not possession, he must prove that the adverse possession of the Defendent or the acts of which he complains as impugning his title, occurred within the period prescribed by the Limitation Act.

In a suit instituted in March 1879 by the Crown for a declaration of title to certain forest land and for possession for a portion thereof, the Defendents allege that the land has been in their possession for more than 60 years.

Held, that it was incumbent on the Crown, under Art 149 of Sch. II of the Indian Limitation Act, 1877, to show possession of the proprietary rights claimed within 60 years, or, if the Defendent proved possession, that such possession commenced or became adverse within such period.

The District Court having held, that up to 1st April 1873, when the Limitation Act of 1871 came into force, the limitation for such a suit was 12 years from the time when the cause of action arose, and that the suit was barred by adverse possession for 12 years prior to 1st April 1873.

Held, that, even if Regulation 2 of 1802 applied to claims by the Crown, in as much as the Regulation only barred the remedy and did not extinguish the right and Act XIV of 1859 did not extend to

such a claim, the right subsisted when the Limitation Act of 1871 came into operation, and as long as that Act was in force, and that the crown, being entitled under that Act to sue within 60 years from the date of the cause of action, and under Section 28of the Limitation Act of 1877, to sue within 2 years from the 1st October1877, the suit was not barred, provided it could be shown that the cause of action arose within 60 years from the date of its institution. (*Secretary of State* v *Vira Rayan*, 9 *M.* 175.)

2.——The Government having possession of a forest under a mortgage is jointly interested therein with the mortgagor within the meaning of Madras Forest Act, V of 1882 Sec 33. (*Ashtamurthi* v. *Secretary of State*, 13. M. 322.)

3. ——Though the burden of proving title is on the claimant, he is not thereby precluded from relying on his long possession as *prima facie* proof of title and on the admission by Government that it had no right except from confiscation or escheat. (*Secretary of State* v. *Madhavi Kettilamma*, S. A. 1744 of 1888.)

4. ——It is certainly not competent to Government to eject a party in possession or to call upon him to prove his title either conclusive or *prima facie*, sufficient to meet the presumption of ownership arising from peaceable possession for several years. It would not be correct to say that whenever the Crown forms occupied land into a reserved forest, the party in possession must fail unless such possession extends to 60 years, for the land being occupied, there is no statutory power to include it in a reserved forest, unless it is the property of Government, and in the absence of such power, the act of Government would amount to trespass or a wrong in law of which it is not entitled to take advantage for the purpose of depriving a subject of the presumption and of ownership arising from possession. (*Secretary of State* v. *Lakshmi Amma Rajah*, S. A. 1024 of 1890).

5. ——The claimant was found to be in possession for a long time (at least 60 years) of a land which the Government notified under Madras Forest Act, 1882, to be constituted a reserved forest. *Held*, that the claim should be allowed.

Per *Muthuswamy Ayyar* J. ——Though Act V of 1882, Madras, throws the onus of proof on the claimant in the first instance, yet

it does not disable him from proving his title against the Crown in the same way in which he is entitled to prove it in a suit between party and party, nor take away from him the benefit arising in favor of his title from possession. *Secretary of State* v. *Vira Rayan*, quoted above, cited. (*Secretary of State* v. *Bavotti Haji*, 15. M. 321.)

Gift.

1. ——— Plaintiff sued to recover certain land in virtue of an alleged gift from her deceased husband. The parties were subject to Marumakkattayam law. The facts were, that, the land being in the hands of tenants, a deed of gift with the counterpart lease was delivered by the donor to the Plaintiff. It did not appear that there were any title deeds belonging to the property. *Held*, that the rule of law applicable is that a gift is perfectly valid if such delivery is made as the nature of the object permits, and that this has been done in the present case; and their Lordships were unaware of any principles which should forbid the application of the said rule of law to Malabar. (*Wannathan Kandile Chiruthai* v. *Keyakadath Pydel Kurup*, 6. M. H. C. R. 194.)

2. ——— The owner of a certain land made a gift thereof to his two sons and daughter, with the intention that it should be enjoyed by them subject to the incidents of Tarwad property, *i e* that the estate should be impartible and held by the donees as joint family estate descendible to the heirs in the female line. *Held*, that the interest of one of the donees in the land was liable to be attached and sold in execution of a decree against him. (*Narayana* v. *Kannan*, 7. M. 315.) -overruled by 16 M. 201, mentioned below under "Gift".

3. ——— In the absence of any direct evidence of an intention to the contrary of the donor, a member of an ordinary Tarwad the gift passes an estate subject to the ordinary incidents of Tarwad property, so far as the donees are concerned. (*Krishna Paniker* v. *Raman Nair*, S. A. 708 of 1884.)

4. ——— In 1832, A purchased property in the name of one of his 3 daughters. There is no evidence of A's intention, but the parties appear to have admitted that he purchased the property for all the 3 daughters together. According to the documentary evidence, plaintiff managed the property from 1856 to 68 and 4th

Defendant's brother from 68 to 88. In 1885, the sole surviving daughter of A, who was the mother of 4th Defendant, and her brother, made a gift of the property to 4th Defendant. Plaintiff sought to set aside this gift on the ground that the property was Tarwad property. Under the circumstances, it was held that the burden of proving that the property was Tarwad property lay upon the plaintiff, and he had failed to do so. (*Krishnan Nambiar* v. *Chathu Nambiar*, S. A. 999 of 1891.)

5. ——— Where a gift of lands is made by a Nair father to his children, to be enjoyed jointly as property subject to the incidents of Tarwad property, each of the donees takes under the gift a distinct share which may be sold in execution for his debts. *Narayana* v. *Kannan*, 7 M. 315, quoted above under "Gift" (now overruled by 16 M. 201, mentioned below, under "Gift") followed. (*Parvathi Ammah* v. *Koran Nambiar*, 1 M. L. J. 395.)

6. ——— Where a suit is brought for the recovery of certain property by persons claiming as donees under one of several persons jointly entitled to the property; *Held*, the suit must fail as it is not one for partition.

Obiter, Members of a Tarwad who are donees under an instrument of gift take it as Tarwad property. *Narayana* v. *Kannan*, 7 M. 315 quoted above under "Gift" (now overruled by 16. M. 201, mentioned below, under "Gift") *questioned*. (*Kunhi Moidin* v. *Kypatt Ambu*, 1 M. L. J. 739.)

7. ——— Land which originally belonged to A, was given after his death to one of his wives and her children in accordance with a wish orally expressed by him. He had not expressed any intention as to how it should be held by the donees. It appeared that they were subject to Marumakkattayam law. *Held by the Full Bench*, that they took the land as the exclusive property of their own branch with the usual incidents of property held by a Tarwad. *Held by the Divosion Court accordingly*, that a decree against the assets of one of the sons could not be executed against the land as a whole or against his share in it. *Narayana* v. *Kannan*, mentioned above, under "Gift" overruled. (*Kunhicha Umma* v. *Kutti Mammi Hajee*, 16 M201.)

Improvements.

1. ——— There is no universal usage in Malabar, nor any presumption that a tenant is not entitled to compensation for improvements effected prior to the date of the Kanom under which he holds and not specially reserved to him by the Kanom deed. (*Mupanagari Narayanan Nayar* v. *Virupatchan Nambudripad*, 4 M. 287.)

2. ——— *Per Curiam* (Full Bench) Where an instrument of mortgage does not expressly secure the amount to be allowed for improvements on redemption of the mortgage, the value of the improvements is not to be calculated in ascertaining the "value of the subject matter of the suit" for the purposes of jurisdiction under Sec. 12 of the Madras Civil Courts Act.

By the custom of Malabar, a condition is attached to all Kanom demises that the mortgagor shall pay the value of improvements made by the mortgagee during the term of the demise before he can redeem, and the repayment of the sums spent in improvements is thus secured by the mortgage in the same manner as the repayment of the principle advanced and must be calculated in determining the value of the subject-matter of the suit for the purpose of jurisdiction. (Per *Turner* C. J.- *Muthusami Ayyar* J., concurring *Zamorin of Calicut* v. *Narayana*, 5 M. 284.)

3. ——— Local usage as to improvements, see below under, "Kanom", *Unnian* v. *Rama*, 8 M. 415.

4. ——— Value is not to be allowed for trees of spontaneous growth (*Kunhimoidin Kutti* v. *Mamod* S. A. 967 of 1887.)

5. ——— Land was demised on Kanom for wet cultivation. The demisee changed the character of the holding, by making various improvements which were held to be inconsistent with the purpose for which the land was demised. On a finding that the landlord had stoodby while the character of the holding was being changed and had thereby caused a belief that the change had his approval-- *Held*, that the demisee was entitled to compensation for his improvements on redemption of the Kanom. (*Kunhammed* v. *Narayanan Mussad*, 12 M. 320)

6. ——— The sum to be allowed for compensation for a tenant's improvements, under Act 1 of 1887 (Madras), is not to be determined by capitalizing either the annual rent or the annual increment due to the improvement, but a reasonable sum should be awarded, assessed

with reference to the amount by which the market value or the letting value or both has been increased thereby; and the Court should take into consideration on the actual condition of the improvement at the time of the eviction, its probable duration, the labor and capital which the tenant has expended in effecting it, and any reduction or remission of rent or other advantage which the landlord has given to the tenant in consideration of the improvement. In the absence of evidence as to the actual market value in the place where the land is situated, the reasonable mode of estimating the compensation consists in taking the cost of the improvement and interest thereon and in adjusting the compensation to be awarded with reference to the matters specified in Sec. 6. (*Valia Thamburatti* v. *Parvati*, 13 M. 454.)

7. ——— A suit to recover property demised on Kanom was pending when the Malabar Compensation for Tenants' Improvements Act (1 of 1887 — Madras) came into force: *Held*, on the construction of Sections 1, 5, and 7, that the tenants' right to compensation should be dealt with in accordance with the provisions of that Act. (*Malikan* v. *Shankunni*, 13 M. 502.)

Mappila.

1. ——— The junior male members of a Mappila Tarwad governed by the Marumakkattayam law are entitled to maintenance from the Tarwad when living in houses of their consorts, and also to a higher rate of maintenance when living with their consorts than when living as single men. (*Bappan* v. *Makki*, 6 M. 259.)

2. ——— Joint enjoyment of family property especially prevails in Malabar, where the wives of Mahomedans are often selected from Tarwads who follow a still more strict comparcenary than the other Hindus. (*Ahmed Koya* v. *Nainan Kutty* A. S. 20 of 1882.)

3. ——— Without expressing an opinion as to the existence among the Mappilas of North Malabar of a custom according to which self-acquired property descent according to the rule of Mahomedan law while the descent of Tarwad property is according to Marumakkattayam law, their Lordship held there was evidence in this particular case of such a special custom in this family for more than 70 years. (*Pathumma* v. *Mama*, A. S. 125 of 1885.)

4. ——— Although Mappilas ordinarly follow the Hindu custom of holding family property undivided, yet, as they are not

subject to the same personal law as the Hindus, their claims cannot be governed by the legal presumption of joint ownership. (*Ammuti* v. *Kunji Key;*, I. L. R. 8 M. 357.)

5. ——— A Mappila governed by Mahomedan Law, in making a gift of his property to his wife and children, stipulated in the deed of gift that the property should be enjoyed as Tarwad property and it cannot be sold or mortgaged by the donees. *Held,* that the prohibition against the alienation was inoperative against the creditor of the donees. *Narayanan* v. *Kannan*, 7 M. 315, mentioned above under "Gift" (now overruled by 16 M. 201), referred to and followed.

The power of a Mappila governed by the Mahomedan Law to create an estate subject to the ordinary incidents attaching to Tarwad property, questioned. (*Moidin* v. *Raman Nair,* S. A. 566 of 1886,)

6. ——— In a suit by the Plaintiff as Karanaven of a Mappila Tarwad to recover lands in possession of the defendants who were donees from and the descendants of a previous Karanaven, and their tenants, it appeared that the alleged previous Karanaven had died less than 12 years before the suit was filed,but more than 12 years before the joinder, as a supplemental defendant of, one to whom he had conveyed certain property by way of gift five years before his death. On an issue raised, it was found that the parties were following Marumakkattayam Law. The rough draft of the plaint, which had been filed by the alleged previous Karanaven, was put in evidence to show that he admitted having alienated property in a manner which would be adverse to the claim of his Tarwad. *Held,* (1) that, on the allegation in the plaint, the Plaintiff was entitled to maintain the suit alone, and that the suit was not bad for multifariousness; (2) that the order and the draft plaint were admisisble in evidence for the above mentioned purposes; (3) *on the evidence,* that the Plaintiff had succeeded to the office of the previous Karanaven as alleged, and that the previous Karanaven had followed the Marumakkattayam rule, although it was shown that other members of the family had dealt with property, described as self acquired, under the precepts of Mahomedan law; (4) that the suit was barred by limitation as against the donee above referred to, her possession having been adverse to the Tarwad since

the date of the gift.
(*Byathamma* v. *Avulla*, 15 M. 19.)

Mussad.

1. ——— The law applicable to Mussads is a combination of Hindu and Marumakkattayam law, and in respect of liability of sons for decree against father ordinary Hindu law does not apply. (*Vishnu Nambudiri* v. *Vasudevan*, S. A. 784 of 1885.)

2. ——— The principle of Hindu law, which imposes a duty on a son to pay his father's debts, contracted for purposes neither illegal nor immoral, is not applicable to Nambudries and Mussads. (*Nilakandan* v. *Madhavan*, 10 M. 9.)

Nambisan.

1. ——— S, nephew (sister's son) of K, a Nambisan governed by Marumakkattayam rule of descent, sued for a declaration that he and his mother were equally entitled with K's widow to K's property. He alleged that his mother was married in the "Kaipidichuvekal" form of marriage, and that, according to the custom of caste he does not inherit to the father, but becomes a member of the family of the mother:— *Held*, that the alleged custom had not been proved, and, unless such a custom was proved, the Hindu law must be taken to govern the descent of K's property. (*Shankara Nambi* v. *Thethi Bratmani Ammah*, S. A. 1309 of 1887.)

Nambudri.

1. ——— Illom vests in last female heir. When she introduced Defendant's father to beget a son, such son was considered an adopted son, and on his death, the mother succeeded as adoptive mother in preference to his natural kindred. (Sadar Ref. 1855; p. 125.)

2. ——— The right of the eldest member to manage the Illom is absolute, and where a junior member had in fact managed it, then this is presumed to have been with the permission of the former, who may at any time take up the actual control. (*Nambiatan Nambudiri* v. *Nambiatan Nambudiri*, 2 M. H. C. R. 110)

3. ——— Where a mother and a daughter (plaintiff), executed a document in favour of defendant, a male relative (nephew of the

former), which purported to divest the plaintiff and her mother of the entire property of the Illom of which they were the sole proprietors, and to vest it in the Defendant in consideration of his promise to marry and raise up heirs to the Illom to which the plaintiff and her mother belonged, and to maintain the plaintiff and her mother till death, and it was proved that plaintiff was well aware of what she was doing, and had subsequently clearly recognized the defendent as absolute proprietor of the property and was contended with his having assumed the position pointed out in the document, *Held*,that the transaction was valid and could not be called into question on the suggestion that the plaintiff was placed at a disadvantage and was not fully cognizant of the irrevocable nature of the deed, and that the rule laid down by the Privy Council in *Ashgar Ali* v *Delroos Banoo Begam* (3 C. 324) & in *Tacoordeen Tewary* v. *N Syed Ali* (L. R. 1 I. A. 392)had been complied with and that the defendent had discharged the burden of proof upon him.

Held further, by *Innes*, J. that the document aimed at defeating the right of escheat of Government, and the transaction was against public policy with reference to the decision in *Cavali Vencata Narainappa's case* (8 M. I. A. 500), but that the plaintiff being *in pari delicto* with the defendent, could not recover the property.

Held, by *Kindersley*, J. that, as no claim was made by the Crown, it was not necessary to decide as to rights which may or may not be claimed by the Crown, and that if plaintiff and her mother were not, as apparently they were not, in the position of ordinary Hindu widows, there was nothing opposed to the public policy in their disposing of the property, as being the last owners and competent to dispose of it absolutely. (*T Sivitri Andarjanom* v. *M Vasudevan Nambudripad*, 3 M. 215)

4. ——— About decree against the Karanaven of an Illom, See below under "Karanaven", *Vasudeva* v. *Narayana*, 6 M 121.

5. ——— A Division Bench of the High Court having directed an issue to the subordinate Judge of N. Malabar, as to whether, by the custom of Malabar, the adoption of sister's son among the Nambudries is valid,the Subordinate Judge examined 11 witnesses selected by theparties to the suit, all of whom were described as Nambudries of note in both districts of North and S Malabar. These witnesses(with the exception of one whose evidence was selfcontradictory

agreed that the adoption of a daughter's or sister's son is recognised by the customary law of Malabar, and supported their opinion by giving instances of such adoption which had taken place within their knowledge and named the persons alleged to have been adopted in pursuance of the custom as holding estates by virtue of the title thereby acquired.

The Division Bench referred to a *Full Bench* the question whether the evidence sufficiently established the custom alleged.

Held by the Full Bench; that the evidence was sufficient to establish that the adoption of a sister's son is sanctioned by the customary law of Malabar.

Per *Turner* C. J. and *Kindersley* J. — Semble, The ruling in *Gopalayyan* v. *Ragupathi Ayyan* (7 M. H. C. R. 250) as to what constitutes sufficient proof of custom has been too strongly expressed.

The rule of estoppel by conduct does not apply where an adoption is made by a person in full belief that the adoption is valid in law and thereby, and by the subsequent conduct of the adopter, the person adopted is induced to abstain from claiming a share in the inheritance of his natural family, so as to prevent a person claiming through the adopter from impugning the validity of the adoption. (*Vishnu* v. *Krishnan*, 7 M 3.)

6. ——— According to Custom a person may be introduced into an Illom to perpetuate its existence. Such person, thereupon, becomes a member of the Illom, and is *prima facie* entitled to exercise the Uraima rights of the Illom (i e to act as trustee of temples, the hereditary trusteeship of which is vested in the Illom) as well as to enjoy the properties belonging to the Illom (*Keshavan* v. *Vasudevan*, 7 M 297.)

7.———Nothing prevents the last female members of an Illom from transferring a trusteeship to their nearest male *Dayadies*. They thereby merely abdicate their rights in favor of reversioners. *Veeran Kutti* v. *Raman* Nambudiripad, S. A. 1037 of 1883.)

8. ——— The son of a daughter given in the *Sarvasvadanam* form of marriage does not inherit in the family of his father so long as other heirs exist. (*Kumaran* v. *Narayanan*, 9 M. 260.)

6, ——— The principle of Hindu law, which imposes a duty

a son to pay his father's debts, contracted for purposes neither illegal nor immoral, is not applicable to Nambudries and Mussads. (*Nilakandan* v. *Madhavan*, 10 M. 9.)

10. ——— In a suit the parties to which were Nambudries following the Marumakkattayam law, the plaintiff sued as the adoptive son of the last member of an otherwise extinct *Mana* for a delcaration of his title to certain lands as the sole *Uralen* of a Devaswam. He was in possession of the greater part of the land, but one paramba was alleged to be held adversely to him by a person not joined in the suit, and the tenants of part of the remaining land had attorned to the defendent. The plaintiff was an adult at the time of the adoption and no female was adopted at the same time with the plaintiff. In 1875, a suit was brought by the defendent's brother and others against the plaintiff and others to set aside an alienation by the present plaintiff's predecessor in title, but the suit was dismissed without any decision as to the *co-uraima* right of the then plaintiff; and the present plaintiff had no further notice of interference by the present defendent's *Mana*: *Held*, that the claim was not barred and that the plaintiff was entitled to the decree sued for.

The form and evidence of adoption considered:— Their Lordships think (*Muthusami Ayyar* and *Brandt*, J J,) that the Subjudge has rightly decided that the adoption is valid. The Subjudge says there may be an adoption either of a female or a male or of both together, that no special form of adoption is required, but that assuming that a ceremony described as "Ganapathy Homam" was necessary, the evidence showed that it was performed. Their Lordships further say that "the taking of the respondent into, and constituting him, an adult, a member of the Thaliyil family, cannot be dealt with strictly on the footing of an adoption according to the Hindu law in families in which the Marumakkattayam system does not obtain, and we are of opinion that the evidence supports the finding that there was what, for the want of a more appropriate term, may be called an adoption in accordance with the form usually observed in and required by the community which includes the Thaliyil Mana, nor is the omission to take or adopt a female at the same time shown to be a fatal objection to the validity of the

transaction." (*Subramanyan* v. *Paramaswaran* 11 M. 116.)

11. ——— Suit by the Secretary of State to declare a right of escheat of the property of an Illom. The last male member of the Illom died in 1859, leaving defendent No. 1 and her mother, the sole surviving members of the Illom. Defendent No.1 had previously been married to a member of another Illom by a *Sarvasvadanam* marriage, but her husband died without issue. In 1872, defendent No. 1 and her mother—there being no *Attaladdkkam* heirs—appointed defendent No. 2, an adult member of a third Illom, to be manager and heir of their Illom, and to marry and raise up issue for it. The mother and father of defendents Nos. 1 and 2, respectively, were brother and sister. *Held* (1) that Nambudries are governed by Hindu law, as modified by special customs adopted by them since their settlement in Malabar;

(2) that defendent No. 2 had no right to the property of the Illom independently of the appointment of 1872;

(3) that the property of the Illom was not *soudayika* of Defendent No. 1, and as such at her absolute disposal;

(4) that a Nambudri widow, who is the sole surviving member of her Illom, is not at liberty to alienate the propetry of the Illom at her pleasure;

(5) that there was sufficient evidence of a custom that a Nambudri widow can adopt or appoint a heir in order to perpetuate her Illom in the absence of her *dayadies* with ten or three days' pollution; and the appointment of defendent No. 2 was valid against the Crown.

Quaere.——— Whether in such appointment of an heir, it is necessary to direct that he should marry for the Illom to which he is appointed as heir. (*Vasudevan* v. *The Secretary of State*, 11. M. 157.)

12. ——— In a suit brought by the plaintiff against all the members of an Illom on a bond executed by senior Anandiraven who was *de facto* Manager, and by the next three Anandiravans of the Illom, Defendants Nos. 9 and 10 contested the claim. The Munsif dismissed the suit as against the Tarwad property on the ground that the Karanaven of the Illom was not party to the

bond and that, by a family compact, authority was given to a certain number of male members with the Karanaven. There was evidence to show that the money was borrowed for purposes binding on the Illom and that at the time when the bond was executed the Karanaven was ill. *Held,* that the plaintiff was entitled to a decree against the Illom property. (*Vasudevan Nambudri* v. *Seetarama Patter,* S. A. 141 of 1887.)

13. ——— According to usage, a caste enquiry is held when a Nambudri woman is suspected of adultery, and if she is found guilty, she and her paramour are put out of caste.

In an enquiry held into the conduct of a certain woman so suspected, she confessed that the plaintiff had had illicit intercourse with her, and thereupon they were both declared outcastes, the plaintiff not having been charged nor having had an opportunity to cross examine the woman or to enter on his defence and otherwise to vindicate his character. In a suit for damages for defamation by the plaintiff against those who had declared him an outcaste: *Held,* that their declaration was illegal, and it having been found that the defendants had not acted *bona fide* in making that declaration, the plaintiff was entitled to recover damages.

Observation on (1) the use of books of history to prove local custom, and (2) on the position as heads of their caste of the representatives of the ancient Sovereigns of the West Coast. (*Vallabha* v. *Madusudanan,* 12 M. 495.)

14. ——— The only daughter of the last member of an Illom was married to A in the *Sarvasvadanam* form. When on her death the Illom became extinct, A claimed the property of the Illom as heir to his wife under sloka 135, ch. IX of Manu Smrithi: *Held, by the Full Bench* (*Shephard, J. dissenting*) that A was not entitled to the property. Per *Parker* J.—The sloka referred only to the wife's peculiar property, and, besides, A had not also been appointed as heir of his wife's Illom.

Per *Muthusami Ayyar* J. ——— When a *Sarvasvadanam* son-in-law was intended to be made an heir, he was constituted as such by special appointment; and the text of Manu, though applicable to the case, had not the force of law in the present Yuga.

(*Agnithrathan* v. *Itticheri*, 1 M. L. J. 303.)

15. ——— In a suit for a declaration that the members of the Illom to which the plaintiffs belonged were the sole heirs and successors of an Illom known as Kiluvapura, of which the natural line had become extinct, and for possession of certain land which had formed part of its property, the defendants were the Karanaven and manager of the plaintiff's Illom. It was found on evidence that the plaintiff's Karanaven had been adopted into the Kiluvapura Illom, and that, subsequently, that Illom and the plaintiffs had been amalgamated under a Karar executed by, among others, the wife of the last male member of the Kiluvapura Illom, and that she had died less than 12 years before this suit. The Defendants other than the Karanaven and manager of the plaintiff's Illom, asserted a right to a moiety of the property of the Kiluvapura Illom (with which, however, it was not found that they were less closely connected than the plaintiffs,) and it appeared that that right had been similarly asserted in suits brought after the date of the Karar above referred to, by a member of the defendent's Illom against the Karanaven and manager of the plaintiff's Illom, and that decrees had been passed therein negativing the title now set up by the plaintiffs and that part of the property now claimed was held under one of these decrees. The plaintiffs did not ask that those decrees should be set aside: *Held*, (1) that the suit was not barred by limitation, (2) that it was unnecessary for the plaintiffs to prove *mala fides* against their Karanaven in respect of his conduct in the former suits or to seek that the decrees passed therein be set aside, and that those decrees did not constitute the present claim *resjudicata*, as the Karanaven was not then impleaded in his capacity as such; (3) that the adoption of plaintiff's Karanaven was valid even assuming that no *datta homam* was performed, and the last male member of the Kiluvapura Illom had died after merely indicating him as his heir, and the widow adopted him in *Dwyamushyayana* form; (4) that the plaintiffs are entitled to a decree as prayed. (*Sankaran* v. *Keshavan*, 15 M. 6.)

16. ——— A junior member of an Illom, of which he was held out as the manager and *de facto*, Karanavan, contracted a debt for the purposes of the Illom. The creditor sued him on the

debt, but did not implead him as Karanaven, and having obtained a personal decree, attached and brought to sale in execution property belonging to the Illom. A son of the judgment debtor now sued to set aside the sale: *Held,* that the sale should be set aside. (*Govinda* v. *Krishnan,* 15 M. 333.)

Pymash.

1. ——— An entry in the pymash account is not *per se* sufficient evidence to establish a right to property which is denied. (*Keshavan* v. *Vasudevan,* 7 M. 297.)

Title to property.—

I. A. Anubhavam.

1. ——— "That the term *Anubhavam* has a technical meaning in connection with grants, implying a perpetual tenure, subject to certain restrictions is not denied. It may also be conceded that the ordinary and primary meaning of the two words (*Anubhavam* and *Yavika*) is practically identical, *viz* to enjoy; but we should hesitate long before deciding that a District Munsif, who had been for several years in Malabar, and a Subordinate Judge of experience on the West Coast were wrong in deciding that the mere use of the word "Yavika" is not consistent with any hypothesis other than that it connotes a perpetual tenure". (*Arumuka Pandaram* v. *Raman Menon,* S. A. 766 of 1885.)

2. ——— A tenant to whom lands were demised on *Anubhavam* tenure alienated some of them, but the landlord susequently accepted rent. In a suit in ejectment by the landlord more than 12 years after the alienation on the ground that the tenure was thereby forfeited, the tenant for the first time denied the landlord's title in his written statement. *Held,* (1) that the cause of action alleged in the plaint was barred by limitation, (2) the disclaimer in the written statement cannot relate back to the date of the institution of the suit and thereby give plaintiff a cause of action which he did not otherwise possess. (*Madhavan* v. *Athi Nangiyar,* 15 M. 123.)

B. Jenm.

1. ——— The Collector of Malabar in 1869 let defendant No. 2 into possession of certain waste land under a cowle, and in 1872

granted to him a patta for it. The Cowldar brought the land into cultivation, but subsequently left it uncultivated and failed to pay the assessed revenue; the land was, accordingly, attached in 1885 for arrears of revenue under the Rent Recovery Act (II of 1864, Madras), and sold to defendant No. 3. The plaintiff, who was the jenmi of the land, had no notice of the grant of either the cowle or the Patta; he asserted his right to *Jenmibhogam* in a petition presented to the Collector at the time of the sale, but the sale proceeded without reference to his claim. The present suit was brought to set aside the sale. *Held,* the interest of the Jenmi did not pass by the sale. (*Secretary of State* v. *Ashtamurthi,* 13 M. 89.)

II. Mortgage.

A. Kaividu Otti.

1. ——— Land demised on the tenure called *Kaividu Otti* is redeemable. Per *Muthusami Ayyar,* J. ——— The several stages of a mortgage, as showing the ancient usage of Malabar, are Kanom and Otti, Ottikumpuram, and Nirmuthal. The distinction between Kanom and Otti consists in this, that in the latter the mortgagor is ordinarily taken to have received two-thirds of the value of his land, and the interest due on the debt is considered to be equal to the annual rent. Ottikumpuram is a higher stage of the mortgage. The mortgagor is taken to have borrowed 10 per-cent, or more of the amount of the Otti. Under this tenure, the mortgagor must also repay the further advance, with interest at 10 per-cent, when he pays off the Otti. The next stage of the mortgage is Nirmuthal. This transaction is entered into when a still further sum is lent after the execution of Ottikumpuram. By this transaction the mortgagor gives up all but the right of water. The next transactions are Jenm-panayam and Attiper, and there is no dispute that these are transfers of an absolute interest. In the proceedings of the late Sadr Court, dated 5th August 1856, it was observed that all the forms of mortgage prior to Jenm-panayam and Attipper were redeemable. Looking to the fact that, when the absolute interest is intended to be transferred, but only the form of pouring water remains to be gone through, the intention is indicated

by the use of the word jenm, it is not likely that the word Otti would be retained as is the case in Kaividu Otti, if an absolute interest was intended to be created. The view taken by the Sadr Court in 1856 that what is relinquished by Kaividu Otti is the power to borrow elsewhere in case the mortgagee refuses to make a further advance, appears to be reasonable with reference to the several gradations, by which the right of the mortgagor was lessened and of the mortgagee enhanced, until the jenm right was transferred from one to the other by a Jenm-panayam deed. (*Kundu* v. *Impichi*, 7 M. 442.)

B. Kanom.

1. ——— Where a first Kanom-holder in his answer to redemption suit by a second Kanom-holder, for the first time denied his own Kanom and alleged an independent jenm right: *Held*, that he had not thereby forfeited his right to rely upon the option to make a further advance, to which as Kanomdar he was entitled, though the denial and allegation were false, and though his documents in support of such allegation were forged (*Paidal Kidavu* v. *Parakal Imbichunni Kidavu*, 1 M. H. C. R. 13)

2. ——— A Kanom mortgagee does not forfeit his right to hold for twelve years from the date of the Kanom by allowing the porapad to fall into arrear. (*Shaikh Ravthan* v. *Kadangot Shupan*, 1 M. H. C. R. 112.) The same point was decided in the same way in S. A. Nos. 84 and 111 of 1862.

3. ——— A Kanom-holder who denies his jenmi's title forfeits his right to hold for twelve years. (*Raman Nayar* v. *Kandahuni Nayar*, 1 M. H. C. R. 445.)

4. ——— A Kanomdar's right to hold for 12 years depends, on his acting conformably to usage and the jenmi's interest, and is lost if he repudiates the jenmi's title. It makes no difference when this is first done in his answer. (*Mayavanjari Chumaren* v. *Nimini Mayaran*, 2 M. H. C. R. 109.)

5. ——— When the Kanom demisor is enable to give possession, the demisee may repudiate the contract and recover the amount advanced. (*V. P. M. Moidin Kutti Ayissa* v. *Udaya Varma Valia Rajah*. 2 M. H. C. R. 315.)

6. ——— Third defendant, purchaser of the interest of first and second defendants, held certain lands under the terms of a permanent Kanom which contained the following condition. "And (I have also agreed) that on failure to pay the said quantity of paddy the kanom amount of 550 fanams shall be received by me, and the land restored". In a suit by the Kanomdar to recover possession for nonpayment of rent: *Held*, that this condition of redemption was intended as a penalty to secure regular payment of rent, such being the original intention of the parties, the penalty was one which ought to be relieved against. (*Kottal Uppi* v. *E. Thathan Nambudiri*, 6 M. H. C. R. 258.)

7. ——— About the redemption of Kanom and Otti mortgages before 12 years, See below, under "Otti", *Keshava* v. *Keshava*, 2. M. 45.

8. ——— If Kanom tenant surrenders before the expiry of 12 years, he is entitled to a refund of a proportion of the renewal fees paid by him (A. S. 32 of 1879.)

9. ——— A Kanom mortgagee is entitled to exercise with the assent of his mortgagor the right to apportion the Kanom amount on various parcels of his land comprised in the Kanom deed. If the original mortgagee has taken upon himself to apportion it, the mortgagor may recover the separate parcels on payment of proportinate Kanom. A mortgagor has no right to split the mortgage without the consent of the mortgagee. (S. A. 525 of 1878.)

10. ——— Where a kanom mortgage was made for a period of 30 years, and it was pleaded that the mortgagor could not, under the law and usage of Malabar, redeem before the expiration of the term of mortgage: *Held*, that the intention of parties as expressed in the mortgage instrument was, that the mortgagee should have possession of the land for a fixed term, not simply as a security for the repayment of a loan to the mortgagor, but as the price at which the loan was to be made; and that in such case the mortgagee was entitled to hold the land for the full period stipulated, until the expiration of which the kanom was irredeemable. Where the fixed time appeared to be intended simply as a protection to the mortgagor from foreclosure within the term, the ordinary presumption that the land was held merely as security for repayment

would prevail, and the mortgage be redeemable within the stipulated period. *Chatu* v. *Chandu*, S. A. 87 of 1879.)

11. ——— The renewal of the Kanom negatives the presumption that it was understood by the parties as granted in perpetuity. (*Nilakandan Nambudiri* v. *Ananda Narayan Patter*. S. A. 138 of 1880.)

12. ——— Although the right to hold for 12 years is inherent in every Kanom according to custom, it is competent to the Jenmi to exclude his right by express agreement. (*Sekhara Paniker* v. *Raru Nayar*, 2 M. 193.)

13. ——— There is no authority to support the prior right of a Kanomdar, like that of an Ottidar, to make further advances. An Ottidar may redeem a prior kanom. (*Kunhamu* v. *Keshavan Nambudri*, 3 M. 246,)

——— Promise to renew a kanom demise which was supported by money consideration advanced by the tenant for Tarwad purposes, and the tenant's readiness and willingness to execute a new engagement on the usual terms were held sufficient to reject the Jenmi's suit for redemption. (S. A. 251 of 1881.)

14. ——— Where a deed was described as a kanom deed and contained stipulations as to compensation for imprevoments, a clause to the effect that the land was to be surrendered "whenever the advance is ready" will not entitle the mortgagor to redeem before the customary 12 years' time has expired, but must be construed as referring to a period subsequent to the term of 12 years. (*Krishna* v. *Govindan*, 5 M. 310)

15. ——— In a suit brought by the plaintiff to redeem a kanom it was found that he had received a portion of the renewal fee agreeing to grant a renewal: *Held*, that the proper course to adopt in order to stop further litigation was to order that the defendant pay plaintiff the balance of unpaid fees and be entitled to occupy the land till the expiry of the term under the renewal. (*Pramathan* v. *Krishnan Nair*, S. A. 617 of 1882.)

16. ——— Promise of renewal is often made by karanavens and documents executed to that effect by receiving loans without interest for Tarwad necessity. (*Kunjikutti Naga* v. *Abdul Rahiman*,

S. A. 251 of 1881.

17. ——— Mortgage of right of Kanomdar.— A Jenmi (mortgagor) being entitled, on redemption of the land. to set off a claim for arrears of rent due to him by the Kanom-holder (mortgagee) against the claim of the latter for compensation for improvements, a pledge of his rights to a third party by the Kanom-holder will not prejudice the right of the Jenmi to set off his claim for arrears of rent against the sum found due to the Kanom-holder for improvements. *(Achuta* v *Kali*, 7 M 545.)

18. ——— According to custom, Kanoms must, on the expiry of the term, either be discharged or renewed. On redemption of kanom, the Kanom-holder is not entitled to claim under the head of improvements, the value of trees of spontaneous growth. In suits to redeem lands demised on Kanom, on payment of the value of improvements, the costs of the adjudication necessitated by the refusal of either party to accept the terms of compenstaion offered or demanded by his opponent should, when those terms are reasonable, be charged on the party refusing. (*Narayana* v. *Narayana*, 8. M. 284.)

19. ——— When a decree is passed for recovery of land demised on Kanom on payment of the amount received as renewal fee, the amount must be ascertained at the trial and inserted in the decree.

On taking an account between the Jenmi and Kanomdar, the former, on redemption, has by custom a right to deduct all arrears of rent due to him from the sum which he has to pay to the latter before recovering possession of the land. (*Kama Pisharodi* v. *Kombi Achen*, 8 M. 381.)

20. ——— In a suit brought against A and B for redemption of land, alleged to have been demised to A on Kanom in 1874 and to be held by B under A, it was found that the demise of 1874 was invalid, because it had been executed fraudulently, but in as much as B admitted that he was in possession under a similar demise of 1855 it was held that the plaintiff was entitled to redeem on the terms of the demise admitted by B. *Kunhi Kutti Nair* v. *Kutti Maraccar*, 4 M. H. C. R. 359 followed.

Local usage of Ernad, by which the Jenmi on redemption of a Kanom takes credit for one-half of the value of improvements

effected by the Kanomdar, upheld.

The right of a Jenmi to deduct arrears of rent from the amount payable by him on redemption of a kanom being a customary incident of the tenure, is not affected by the three years period of limitation for the recovery of arrears of rent. (*Unnian* v. *Rama*, 8 M. 415.)

21. ——— On payment of *Avakasam* or renewal fee the tenant is, by custom, entitled to hold for a term of 12 years. (*Veerarayan* v. *Kannan Nair*, S. A. 636 of 1884.)

22. ——— In S. A. 766 of 1885, the Madras High Court has decided that a *Marupat* (duplicate of Kanom document kept by a Jenmi in former times when it was not usual to take Kaichits or Muchilikas from tenants) is primary, not secondary evidence of the Kanom demise. (*Armugam* v. *Kandarsa Menon*, 1. M. L. J. 59.)

23. ——— A kanom deed stipulated that the land should be surrendered if the Jenmi require it and tenders the kanom amount and the proportionate part of the *Atuthathu* (premium): *Held*, that no surrender was necessary before the expiry of 12 years in the absence of any special exigency rending it necessary for the Jenmi to redeem before 12 (years. (*Raman Nambudripad* v. *Maomd Kutti*, S. A. 747 of 1885.)

24. ——— A, demised certain lands on kanom to B in 1853. B afterwards committed an offence under the Mappila Act and the lands were handed over for the benefit of his representatives to C. Government, subsequently, without making A a party to their proceedings, declared the lands to have escheated, and in 1863 sold them to C. A's representatives now sued to recover the lands from C's representatives who set up an adverse title and alleged that the suit was time barred. *Held*, that C was, at the time of the escheat, in the possession of a manager for mortgagees; that the escheat proceedings of which the mortgagor had no notice did not affect his rights; that the denial by the mortgagee in possession of the mortgagor's right to redeem is not sufficient to convert such possession into adverse posseseion. (*Mussad* v. *The Collector* of *Malabar*, 10 M. 189.)

25. ——— The primary intention that a kanom is to be redeemed only after 12 years, can be negatived either expressly or by implication by a special clause. (*Ahmed Kutti* v. *Kunhamed*,

10 M. 192.)

26. ——— Tenant entitled to renewal of kanom on proof that the renewal fee or portion has been paid to the authorised agent of the Jenmi. (*Punnathoor Devaki Valia Rani* v. *Ummar*, S. A. 625 of 1887.)

27. ——— The clause restraining redemption is bad in law and unenforcible. (*Thuphan Nambudri* v. *Ereshan Nair*, S. A. 125 of 1887.)

28. ——— In 1865, when the plaint properties were outstanding on a kanom granted by the Jenmi in 1863, a decree was passed directing the sale of the Jeami's right, title and interest in them. In 1877, (the decree being still unexecuted) in pursuance of this decree, the properties were brought to sale and purchased by the Plaintiff's mortagagor. In a suit fo redeem the Kanom of 1863, the tenant (7th Respondent) set up a renewal of the Kanom by the Jenmi in 1876. *Held*, that the Plaintiff was entitled to redeem and that the Respondent was not entitled to cut down the execution creditor's right by taking a new Kanom from the Judgment debtor so as to impair value and postpone the execution creditor's right (*Mana Vikraman Tirumulpad* V. *Athan*, S. A. 124 of 1887.)

29. ——— Promise of renewal accompanied by part payment of renewal fee is a valid defence in a redemption suit. (*Raman Menon* v. *Ramacha Nedungadi*, S. A. 954 of 1890.)

30. ——— In 1870 the Managers of the Plaintiff's Tarwad demised certain land now in suit on Kanom. In 1885, they sued to redeem the Kanom and a decree was passed that the Plaintiff do pay a certain sum to the Kanomdar, and that he do surrender the land but in the judgment it was said that the Kanom amount should be charged on the land. In 1886, the Tarwad was divided and the land above referred to was alloted to the present plaintiff's branch. In 1887, the kanomdar, in execution of the decree, brought the land to sale and it was purchased by Defendant No.1. *Held*., the sale was not binding on the plaintiff.

Per *Muthusami Ayyar*, J.—The decision of the Courts below rests on the ground that a money decree against the karanaven is sufficient to validate a sale of Tarwad property as against

an Anandiraven, provided that the decree debt is one which binds the Tarwad. But in the case before us the plaintiff has separated from the Tarwad and his community of interest with the judgment-debtors had determined before the attachment and sale in execution of the decree.

Per *Best*, J. — A judgment can no doubt be looked into to explain a decree; but neither in the judgment nor in the decree is there any authority given to the then defendent (now 2nd Defendent) to recover the amount then found due to him by execution of that decree. (*Sankara* v. *Kelu*, 14. M. 29.)

31. ——— In a suit to redeem a Kanom executed less than 12 years before the suit it appeared that the Kanom instrument provided for the surrender of the property "if at any time the property should be necessary" for the Jenmi. No special exigency had been established by the plaintiff, *Held*, the suit was premature. (*Mahomed* v. *Alikoya*, 14 M. 76.)

32. ——— In a suit for the redemption of a Kanom, the institution fee must be computed on the Kanom debt as it originally stood. (Referred case No. 28 of 1891. 14 M. 480.)

33. ——— In a suit for redemption of Kanom, the decree directed the surrender of the land to the plaintiff on his paying the kanom amount and value of improvements within three months of the date of the decree. The decree was not executed accordingly. In a new suit brought by the jenmi for redemption of the same kanom: *Held*, that the present suit was not barred by the former decree, as kanom was in fact only a usufructuary mortgage for a period of 12 years at the end of which it became redeemable as simple mortgage; as the only decree that could have been made in the former suit was that in default of payment within a time to be fixed (no such time appears to have been fixed in the former decree) the property be sold, and as the relation of mortgagor and mortgagee still continued owing to the property never having been sold. (*Ramunni* v. *Brahma Dattan*, 15. M. 366.)

C. Karankari.

1. ——— Although the terms of a document creating a Karankari tenure expressly state that the demisees shall not be called upon to surrender the land, yet it does not bar the landlord from

insisting on the ordinary right of a landlord to a forfeiture of the holding when the tenants deny his title and claim to hold of another. There is no difference between the liability of a Karankari tenant in this respect and that of an ordinary Kanomdar. The clause in the deed is considered to operate only to prevent the landlord terminating the holding at any period without any special cause. (S. A. 680 of 1880.)

D. Kettiadakkam Kanom.

1. ——— Kettiadakkam Kanom is a Kanom mortgage in which the interest upon the sum advanced absorbs the whole rent payable on account of the land. It does not, however, amount to an Otti mortgage which secures to the Ottidar the right of pre-emption and right to the first refusal to make further advance. This Kanom mortgage also is irredeemable before the expiry of 12 years from its date. (S. A. 142 of 1870)

E. Mattotti.

1. ——— The holder of a *Mattotti* mortgage has, like the holder of an Otti mortgage, the right of pre-emption and of making further advances to the mortgagor. The right of pre-emption, in such cases, carries with it, also the right of continuing to hold as mortgagee in preference to others, and therefore an agreement whereby the mortgagor empowers a person to redeem the *Mattotti* on payment of the amount due is invalid as against the mortgagee.

Held also, that when a mortgagee sub-mortgaging a portion of the mortgaged property stipulates that the sub-mortgage is to be paid off when the mortgagor pays of his own mortgage, he cannot by consenting to the mortgagor redeeming the portion of the property sub-mortgaged, deprive the sub-mortgagee of his right to hold until the original mortgage is redeemed. (*Keeran Avulla* v. *Chandra Sekharan Nambudri*, 1 M. L. J. 485.)

F. Melkanom.

1. ——— A Melkanomdar cannot eject a kanomdar or his assignee before the expiration of 12 years from the date of the kanom. (*Pramatan Tupen Nambudripad* v. *Madatil Ramen* 1. M. H. C. R. 296.)

2. ——— A suit brought by a Melkanom-holder against the Jenmi and the holders of a prior kanom in possession to recover possession of the lands may be properly treated, for the purpose of jurisdiction, as a suit for land, although it results in a decree for redemption, and if regarded as a redemption suit, would be cognizable by a Court of Subordinate Jurisdiction.

The holder of a Melkanom may recover the land from the Kanom-holder after the expiry of the term of the Kanom on payment of the sum advanced by the latter and of the value of improvements. The Jenmi is not bound to give the Kanom-holder the option of making further advances before demising to another tenant on Kanom. (*Markar* v. *Parameswaran* 6 M. 140.)

G. Otti.—

1. ——— A Karanaven singly may make an Otti mortagage. *Semble*, an Otti mortagage cannot be redeemed until after the lapse of a twelve years from its date. (*Edatil Itti* v. *Kopashan Nayar,* 1 M. H. C. R. 122.)

2. ——— An Otti, like a Kanom, mortagage cannot be redeemed before the lapse of twelve years from its date. An Otti differs from a Kanom mortagage, first, in respect of the right of pre-emption which the Ottidar possesses; secondly, in being for so large a sum that practically the Jenmi's right is merely to receive a pepper-corn rent (*Kumini Ama* v. *Parkam Kolusheri,* 1 M, H. C. R. 261.)

3. ——— During the continuance of a first Otti mortagage the Jenmi is in the same position as regards his right to make a second Otti mortagage to a stranger after, as he was before, the lapse of twelve years from the date of the first mortgage.

Where a Jenmi made an Otti mortgage and more than twelve years after made a second Otti mortgage to a stranger without having given notice to the first mortgagees so as to admit of the exercise of their option to advance the further sum required by the Jenmi :—*Held,* that the second mortgagee could not redeem the lands comprised in the first mortgage (*Ali Husain* v. *Nillakanden Numbudiri* 1 M. H. C. R. 356.)

4. ——— An Otti-holder, like a Kanomdar, forfeits his right to hold for twelve years, by denying the Jenmi's title. (*Kellu Eradi* v. *Ruapalli,* 2 M. H. C. R. 161.)

5. ——— *Held*, by *Morgan*, C. J., that it is settled that in the case of Kanom and Otti mortgages it is not competent to the mortgagors to redeem, before the arrival of the appointed time. (See above, 1 M. H. C. R. 122 and 261, under "Otti.") Agreeing in the views expressed by the Chief Justice, *Innes*, J. goes further and says that if in the case of any mortgage the period for redemption is postponed to a fixed day by special agreement, effect should be given to such agreement (*Keshava* v. *Keshava* 2 M. 45.)

6. ——— An Ottidar does not forfeit his right by endeavouring to set up further charges in answer to a suit for redemption and failing to prove them, or by denying that an assignment of his Jenmi's title is valid because it was made without his consent in writing and in defeasance of his right of pre-emption, without previous offer to him. (*Kunhali* v. *Kinathe*, 3 M. 74.)

7. ——— The prior right of an Ottidar to make further advances is established by authorities, but there is no authority to support a Kanomdar's claim to a similar privilege. An Ottidar may redeem a prior Kanom. (*Kunhamu* v. *Keshavan Nambudri*, see the above, under "Kanom" 3 M. 246.)

8. ——— In a suit to recover certain lands on the strength of an Otti demise of 1820 alleged to have been granted for a period of 55 years, the Plaintiff produced a document without signature, without witnesses, not professing to be an original, called a counterpart, but not shown to be more than the copy of a draft; it was spoken to at 58 year's distance of time by two old men who, when the event happened which they spoke to, were young lads, who, somehow or other, were about the Plaintiff's household, and happened, not, in any official character, but accidentally to be present when the Otti mortgage was executed, and one of whom could not even read the character in which the document was written. *Held*, that the Plaintiff's case was not proved and that it would be extremely dangerous to allow titles resting on long possession to be shaken by such evidence as that. (Privy Council Judgment in *Narayanan Nambudiripad* v. *Sankunni Tharavanar*; delivered 9th December, 1881.)

9. ——— An Otti mortgagee, if he avails himself of his right of pre-emption, must pay whatever sum is *bonafide* offered to the Jenmi for his equity of redemption; but the Ottidar is entitled to be fully

informed as to the circumstances and amount of the offer before electing to buy. Public notice of and the option of bidding at a Court sale of Jenmi's rights do not constitute a valid offer of pre-emption so as to deprive the Ottidar of his right of pre-emption, if he does not purchase the Jenmi's rights. (*Cheria Krishna* v. *Vishnu*, 5 M. 198.) See, about the same subject, *Ammotti Haji*, v. *Kunhayen Kutti*, 15 M. 480, below.

10. ——— R having conveyed certain land to P on Otti tenure in 1852, executed a deed of further charge (Ottikumpuram) in 1873 to P's widow, and in 1879, conveyed the Jenm (equity of redemption) to her.

Between 1873 and 1879, R, mortgaged the same land to A by *Jenm-panayam* deed.

In a suit by A to enforce his mortgage; *Held*, in as much R had not given notice to the Otti holder, nor given her option of making further advance made by A, A had no claim against the land. (*Ambu*, v. *Raman*, 9 M. 371.)

11. ——— In an Otti deed executed by the Plaintiff's father the following clause occurred:— "This paramba will not be taken from you so long as you and your descendants live". In a suit to redeem: — *Held*, that the Plaintiff was entitled to redeem and that the clause restraining the right of redemption was bad in law. (*Thankamma* v. *Chitambaran*, S. A. 25 of 1887.)

12. ——— A jenmi having demised certain land on Otti to defendant No.3 in 1869, sold the jenm title to the plaintiff and Defendants Nos. 1 and 2 in 1886. In 1888 defendant No. 3 made a further advance to, and obtained a renewed demise from, defendants Nos. 1 and 2. The plaintiff now sued, more than 6 years after the sale, to recover his share (Defendant No. 3 being in possession) on payment of one-third of the Otti amount: *Held*, that (whether or not the suit was maintainable as framed) the third Defendant had a right of pre-emption as Ottidar, which had not been waived by him and was not barred by limitation (Sec. 28 of Act XV of 1877), and which constituted a good defence to the suit. (*Kanharankutti* v. *Uthotti*, 13 M. 490.)

13. ——— In a suit to redeem a Kanom of 1874, it was found that the plaintiff's predecessor in title had purchased the jenm title

to the land in question at a sale, held in execution of a decree which was binding on the jenm's Tarwad; but it appeared that the defendant (the Kanomdar) held an Otti on the land, dated 1870, and had it not waived his right of pre-emption as Ottidar. A decree was passed providing for payment by the defendant of the purchase money to the plaintiff and the execution by the latter of a conveyance, and in default for redemption by the plaintiff on his paying to defendant the amount of the Otti:— *Held*, that the decree was right. (*Ukku* v. *Kutti*, 15 M. 401.)

14. ——— An Ottidar loses his right of pre-emption if he refuses to bid at a Court-sale of the land comprised in his Otti, held in execution of a decree against the Karanaven and senior Anandiraven of the Tarwad, in which the jenm right is vested, after having been specially invited to attend and exercise that right, and makes no offer to take the property for a long time after the Court sale. (*Ammotti Haji* v. *Kunhayen Kutti*, 15. M. 480.)

H. Peruarthum.

1. ——— In the case of the mortgage of the kind called a "Peruarthum" mortgage, when the mortgagor redeems, the mortgagee is entitled (before restoration of the mortgaged land) to be paid its market value at the time of redemption, not the amount for which the land was mortgaged. (*Skekari Varma Valia Rajah* v. *Mangalm Amugar*, 1 M. 57.)

I. Vakaola Karanam.

1. ——— *Held, on the evidence,* that a Vaka tenure is not redeemable. (*Kunhunni Nair* v. *Konna Paniker*, 1 M. L. J. 659.)

2. ——— An instrument called *Vaka ola Karanam* is a perpetual lease. (*Muppil Nampidi* v. *Komukutti*, S. A- 819 of 1881.)

J. Veppu.

2. ——— A jenmi having conveyed certain land upon a *Veppu* tenure (mortgage, of which the right of pre-emption and the option of making further advances are incidents) created a further charge on the land, without giving the *Veppuholder* the option of making the advance required.

In execution of a decree against the jenmi a judgment-creditor brought to sale the right of the jenmi in the land subject to

the further charge. In a suit brought by the Veppu-holder to set aside the auction sale on the ground that his right of pre-emption was injured thereby:— *Held,* that the suit would not lie.

Per *Turner* C. J. - Had the Veppu-holder come into Court within time, he would have been entitled on tendering the price, to claim that the jenmpanayam should be transferred to him. He has not offered to pay the amount of the jenm-panayam, nor has he applied for its transfer. He has asked that the sale at auction be set aside, because it was made subject to the principal amount of jenm-panayam and interest. There is evidence that at the auction sale an offer was made to the Veppu-holder's Karanaven to purchase at the price offered by the highest bidder and refused. If he or his Karanaven had purchased the right to call for a transfer of the jenm-panayam would not have been prejudiced by the purchase; nor would the circumstances that the sale notification erroneously declared that the land was liable for interest as well as the principal of the jenm-panayam debt (if this was so) have prevented the auction purchaser from showing that in fact the interest was not charged on the land. (*Vasudevan* v. *Keshavan,* 7 M. 309.)

Sabha Yogam.

1. ——— All co-owners must join in a suit to recover property unless the law otherwise provides; they may agree that property shall be managed and suits conducted by some or one of them, but they cannot invest such person or persons with a right to sue in his own name on their behalf, although, perhaps, a tenant might be estopped from denying the title of his lessor in such case.

If some co-owners refuse to sue, the proper course for the rest to adopt is to make them defendants in the case. (*Kanna Pisharody* v. *Narayanan Somayajipad* 3 M. 234.)

Sa

——— A sale of family property is valid when made with express or implied, of all the members of the Tarwad, e deed of sale is signed by the Karanaven and the senior if *sui juris.* Such signature is *prima facie* evidence f the family, and the burden of proving their dissent who allege it. (*Kondi Menon* v. *Sranginreagatta*

Ahammadla, 1. M. H. C. R. 248.)

2. ——— The assent of the Anandiravens is necessary to a sale of Tarwad land by a Karanaven. The chief Anandiraven's to the instrument of sale is sufficient, but not indespensible, evidence of such assent. (*Kaipreta Ramen* v. *Makkaiyil Mutoren* 1. M. H. C. R. 359.)

3. ——— Where a suit was brought to recover money from the defendant who was Karanaven, and it was not alleged in the plaint that the defendant was sued as karanaven or that the debt was binding on the Tarwad:— *Held*, that a sale of Tarwad property in execution of the decree was not binding on the members and therefore that Art. 12 of Sch. II of the Limitation Act, 1877, did not apply to a suit brought by the members of the Tarwad to recover the land sold in execution of the decree. (*Haji* v. *Atharaman*, 7. M 512.)

Stanom.

1. ——— The creditor of a deceased *Stani* can realize his personal debts only by the sale of the property, if any, of the deceased. The head of the Kovilagam to which the deceased belongs is not liable to discharge such debt. (Sadr. A. S. 7 of 1843.)

2. ——— A stanam-holder is only a trustee of the property belonging to the stanom and cannot alienate revenue to the prejudice of his successors. (*Manavicrama* v. *Subramanien Patter*, Sadr. Rep. 1853, p 214.)

3. ——— Lands attached to stanom, liable to alienation and charge. See above under "Alienation", *Chemminikara Muppil Nair* v. *Kiliyanat Ukona Menon*.

4. ——— *Stani* cannot hypothecate Stanom property beyond his life. (Sadr Decision, 20 of 1861.)

5. A *Stani* has no legal authority to execute a deed which from its conditions entails permanent loss to the Stanom. (S. A. 71 and 72 of 1864.)

6. ——— According to the custom obtaining in the family of the Zamorin Rajahs of Calicut, property acquired by a Stanom-holder and not merged by him in the property of his stanom or otherwise disposed of by him in his lifetime, becomes, on his death, th

property of the Kovilagam in which he was born, and, if found in the possession of a member of the Kovilagam, belongs presumedly to the Kovilagam as common property. (*Vira Rayen* v. *The Valia Rani, Calicut* 3. M 141)

7. ——— The grant of a perpetual lease at a fixed rent is not necessarily beyond the powers of a Stanom-holder in a Malabar royal family. (*Mana Vikraman* v. *Sundaran Pattar,* 4 M. 148.)

8. ——— A person who lends money to a *Stani* is bound to enquire into the necessities of the loan and to satisfy himself as well as he could that the *Stani* was acting for the benefit of the estate. But if he did so and acted honestly, and with due custom, he ought not to suffer if he was himself deceived as to the real existence of the necessity, and would not be bound in such case to see to the application of the money advanced by him. *Hanuman Prasad's case,* VI M. I. A. 393, referred to and followed. (*Chekutti* v. *Shuugunni,* S. A. 261 of 1886.)

9. ——— A suit was brought by the junior members of a Tarwad, which consisted of 3 Stanams and 3 Tavazhies, against the Karanaven and others, including certain persons to whom he had alienated some Tarwad property. The plaint as originally framed prayed (1) for the removal of the Karanaven, (2) for a declaration that defendants No. 2 to 8, the senior Anandiravens, has forfeited their right of succession to him, (3) for the appointment of the plaintiff in his place, (4) for a declaration that his alienations were invalid as against the Tarwad, and (5) for possession of the property alienated. Subsequently, the plaint was amended by order of the Court by striking out items 2 to 5 of the prayer, and finally the plaintiffs further amended the plaint and sued only for a declaration that alienations in question were invalid. The Lower Court passed the declaratory decree sued for:

Held, that the Lower Court was wrong in allowing the plaint to be amended after the first hearing, because the case on which the decree was passed was essentially different from that disclosed in the plaint; and that the appeal must be allowed accordingly.

Per Cur: —— The suit was not bad for multifariousness —— *Vasudeva Shanbhga* v. *Kuleadi Narnapai,* 7 M. H. C. R, 290, considered.

The ptaintiffs were competent to maintain the suit as dealt

with by the Lower Court, if there was collusion between the Senior Anandiravens and the alienees and the *Stani* for the time being — *Rani Anund Koer* v. *The Court of Wards*, L. R. 8 I. A. 22, considered.

Rights of members of a Stanom *inter se* considered. — Per *Muthusami Ayyar and Parker*, J J., — "According to the custom of Malabar, the nature of *stanam* property is such that the present holder has in it a life interest and the successor derives no benefit from it during the life of his predecessor, whereas in ordinary Tarwad property each member of the Tarwad has a concurrent interest and a joint beneficial enjoyment. Although the possession of a *Stani* is analogous to that of a childless widow, in that both have a life interest, both represent the estate or inheritance for the time being, and both have a disposing power only to a limited extent, the analogy does not extend to the estate taken by the reversioner. Each male reversioner becomes under Hindu Law the full ower when the reversion falls in, whereas the person that succeeds to a *Stanom* takes the same qualified estate that his predecessor had ... .The relation between the *Stani* and the Junior member of each subsidiary Tarwad is that which exists between the representative of the *Stanom* for the time being and the class of persons who may become Karanavens of their Tarwads and therefore representatives of the Junior and Senior *Stanoms* in the order of seniority...The general rule is, no doubt, that the right to bring a declaratory suit before the reversion vests in possession is limited and belongs to the presumptive reversionary heir; but it must also be observed that a remote or contingent reversioner may be permitted to sue under special circumstances. In *Rani Anund Koer* v. *The Court of Wards*, L. R. 8 I. A. 23, the Privy Council after pointing out that if the right of suit were not limited, it would belong to every one in the line of succession observed: 'If the nearest reversionary heir refuses without sufficient cause to institute proceedings, or if he has precluded himself by his own act or conduct from suing, or has colluded with the widow or concurred in the act alleged to be wrongful the next presumable reversioner would be entitled to sue'. In such a case, upon a plaint stating the circumstances under which the more distant reversionary heir claims to sue the Court must exercise a judicial

discretion in determining whether the remote reversioner is entitled to sue and would probably require the next reversionary heir to be made a party to the suit. Though this was a decision in regard to a remote reversioner under Hindu Law, the present suit falls within its principle, *viz.*, that a suit for a declaratory decree is allowed in order that the next reversioner may remove that which would be a bar to his title when it vested in possession; but, there was an allegation in the plaint in the case before us that all the Senior Anandiravens between the Plaintiff No. 1 and the orignal defendant No. 1, *viz* defendants 2—8 were hostile to the Tarwad and forfeited their right of succession, and there was also a prayer for a declaration that they were debarred from such succession." (*Mahomed* v. *Krishnan*, 11 M. 106.)

Tarwad.

A. Anandiraven.—

1. ——— An Anandiraven cannot sue to redeem a mortgage by Karanaven, though the Karanaven refuses to sue for redemption, and is made defendant (S. A. 808 of 1861.)

2. ——— An individual member of a Tarwad has no right to an account from the Karanaven. Each member has a right to succeed by seniority to the management of the family property. *Semble*, an Anandiraven's right to maintenance is merely a right to be maintained in the family house. (*Kunigaratu* v. *Arrangaden*, 2 M. H. C. R. 12.)

3. ——— An Anandiraven has no right to the value of improvements effected by him on Tarwad propert y upon surrender to the Karanaven when such improvements are not made with private funds. (*Kannan* v. *Tenju*, 5 M. 1.)

4. ——— The Karanaven having sued to redeem certain land belonging to the Tarwad, which had been demised on Kanom, consented to abide by the oath of the mortgagee as to genuiness of the Kanom. The mortgagee having taken the prescribed oath, the suit was dismissed. *Held*, that the juinor members were not estopped by the decree in such suit from redeeming the land. Where fraud, or breach of duty by a Karanaven is proved, his act must be treated as a fraud upon his power, and will not bind the Tarwad (*Thenju* v. *Chenimu*, 7 M. 413.)

5. ——— The plaint lands being the Jenm of a Devaswam were sold in execution of a decree obtained by defendent No. 1 against the Uralars. Plaintiffs being the Anandiravens of the Uralars sued to set aside the sale alleging that the debt was not contracted for Devaswam purposes and that the decree was collusive. *Held*, that the decree was binding on the plaintiffs unless it had been obtained by fraud and collusion. (*Kelu* v. *Paidel*, 9 M. 473.)

6. ——— A decree having been obtained against the Karanaven and senior Anandiraven whereby the Tarwad was dispossessed of certain land, the junior members who had not been impleaded in the suit sued to recover the land. *Held*, that the plaintiffs were entitled to recover upon proof that the decree in the former suit was not substantially correct and that they were not bound to prove *mala fides* on the part of their Karanaven in defending the former suit as a condition precedent to recovery. (*Sridevi* v. *Kelu Eradi*, 10 M. 79.)

7. ——— A and B, Junior members of a Tarwad, sued to cancel certain mortgages executed by their Karanaven and senior Anandiraven, on the ground that the debt was not binding on the Tarwad, and to appoint A to the office of Karanaven. The last part of the prayer was withdrawn. The mortgages were executed to secure a decree debt, the decree having been passed *ex parte* against the late Karanaven. No fraud was alleged, but the Lower Courts found that the Karanavan had been guilty of fraud in allowing the decree, to be passed *ex parte*. The plaintiffs had not been parties to the decree, and the other junior members who had been joined were exempted from liability. *Held*, that the nature of the debt was not *res judicata*, and that the plaintiffs were entitled to a declaration that the mortgages in question were invalid as against them.—— *Held further, Per curiam*—All the members of the plaintiff's Tarwad should have been joined actually or constructively; but t(*Kernan* J. dissenting), the objection as to non-joinder is not essenial, but merely formal, and weight should not be attached to it when it is first taken on Second Appeal. (*Moidin Kutti* v. *Krishnan*, 10 M. 322.)

8. ——— Held in a suit by some of the Anandiravens against the Karanaven ard other Anandiravens and certain persons to whom some of the Tarwad property had been alienated by the Karanaven

for a declaration that the alienations were not binding on the Tarwad, that the suit was not bad for multifariousness. *Vasndeva Shanbhage* v. *Kuleadi Narnapai,* 7 M. H. C, R. 260, allowed. (*Abdul* v. *Ayuga,* 12 M. 234.)

9. ——— Suit by junior Anandiravens against their Karanaven and senior Anandiraven and certain persons claiming under a Kanom granted by the former for a declaration that the kanom was invalid, and for possession of the land demised with mesne profits. The suit was filed nearly 12 years after the execution of the Kanom: *Held,* (1) that the suit was maintainable by the plaintiffs, (2) that the suit was not barred by limitation. (*Anantan* v. *Sankaran,* 14. M. 401.)

10. ——— Junior Anandiravens sued to set aside a sale in execution of a decree, passed on a mortgage which had been executed by their Karanaven and senior Anandiravens in consolidation of two prior mortgages executed, respectively, to secure two debts. It appeared that one of these debts was binding and the other not binding on the Tarwad. *Held,* that the Court should declare the plaintiffs entitled to the property sold notwithstanding the sale, but subjected to the charge created to secure the binding debt. (*Kunhi Mannan* v. *Chali Vaduvath,* 14 M. 494.)

11, ——— The junior members of a Tarwad are entitled to recover possession for the Tarwad of property alienated by the Karanaven by way of gift, where the alienation is not binding on the Tarwad. In such case, the proper relief to be granted in reference to the instrument is a declaration that it does not affect the right of the Tarwad to the property sought to be given away, and not to the cancellation of it. The declaration cannot be granted where possession is not prayed for. (*Bikutti* v. *Kalenden,* 14. M. 267-)

12. ——— "You and your children (Kunhu Kuttikal)" does not of itself give perpetuity without further words to indicate that meaning. (*Nilekanta Namby* v. *Raman Menon* S. A. 1535 and 1536 of 1889.)

13. ——— "The assets of the deceased Anandiraven devolved upon his death on the Tarwad subject to payment of his debts" (*Parathi Mathu* v. *Unichathun,* S. A. 1595 of 1889.— See the same case under "Karanaven")

14. ——— "You and your Anandiravers will hold the said lands as long as you are willing, and pay the rent calculated at the said rate" — this clause does not restrict the right of enjoyment to the family of the lessees. It appears to confer on the family a permanent right so long as they might be willing to pay rent in respect of the land reclaimed. (*Achutha Menon* v. *Venkiteswara Patter*, S. A.626 of 1890.)

B. Karanaven.

1. ——— Admissions of a Karanaven are not necessarily binding on the Tarwad. (Sadr Rep, 1855. p. 17.)

2. ——— Payment to Karanaven of Kanom amount due to the Tarwad is a good payment. (S. A. 625 of 1860.)

3. ——— A mortgage by Karanaven was upheld where it appeared that it was mainly for family purposes, and no fraud or collusion was proved. (Sadr Rep., 1856. p. 94.)

4. ——— *Bona fide* sale by Karanaven is binding on his Anandiravens who do not at once object thereto. (Sadr Rep., 1856. p. 119.)

5. ——— Debts contracted by Karanaven bind the Tarwad unless it can be clearly and satisfactorily proved that they were not contracted for the benefit of the Tarwad. (Sadr Rep., 1858. p. 180.)

6. ——— If the Karanaven and other members of the Tarwad consent to Anandiravens dealing with Tarwad property as their own they are bound by their alienation. (Sadr Rep., 1860, p. 133.)

7. ——— Karanaven may, during his lifetime, narrow his own rights by contract, but it can have no force whatever after his death (Sadr. A. S. 490 of 1860.)

8. ——— It is not law that every right may be renounced. The general rule is power of renunciation, but there are two marked classes of exceptions :— There can be no renunciation of rights and consequent destruction of relative duties prescribed by an absolute law ; nor of rights inherent in man as man. A man may renounce a concrete right, but not one resulting froma natural condition. *Semble*, a Karanaven cannot part, by contract, so as to be unable to resume them, with the privileges and duties which attach to his

position as Karanaven. (*Cheru Komen* v. *Ismala*, 6 M. H. C. R. 145.)

9. ———— Suits by a branch Karanaven to recover certain lands belonging to his branch Tarwad, which had been mortgaged by a branch Karanaven. Plea, that the plaintiff had no right to sue without the authority of the senior member of the family, the Velia Kaimal. Uppon an issue sent (in Special Appeal) by the High Court, it was found by the Civil judge that there was no binding and peculiar custom in the family depriving the senior member of all management of the property and vesting it in the branch Karanavens. Upon the final hearing it was contended that the contrary had been so irrevocably fixed by judicial decision as to prevent the matter from being open to question, and that this finding was bad in law, as being opposed to binding decrees of competent courts. *Held*, (1)That there was nothing compelling the Court to decide, contrary to the plain rules of law, that this delegation was irrevocable; that, perhaps, it was not so even by the delegator, and still less was it so by his successors. (2) That the fact of the setting apart of *Stanom* property, if it was set apart, can make no difference and as little can the circumstance of the income reserved. (3) That there was nothing to prevent the Court from deciding that the Civil Judge was right in saying that this was an ordinary Malabar Tarwad. (4) That the renunciation before the Sadr Court was not even irrevocable as against him who made it, and certainly could not have the effect of depriving the senior member, for all future time, of the rights which the law of the country conferred upon him with the correlative duties upon his becoming senior.

Per *Scotland*, C. J. — That the Court was constrained to hold that the irrevocability of the arrangement effected in 966 by the former head of the family, as to the apportionment of the family property between two Thavazhies and the management of each Thavazhi's allotment by its senior member, was a matter conclusively adjudicated in the course of the litigation of which there was proof in the records. That such arrangement operated only as a personal renunciation and delegation of the rights of management possessed by the then head of the Tarwad; and that assuming it to have been irrevocable by him, it was not binding on the 3rd defendant, admittedly the head of the family by right of seniority. (*Velia Kaimal*

v. *Velluthadatha Shamu*, 6 M. H. C. R. 401.)

10. ——— Where a Karanaven was found to have made perpetual grants of certain Tarwad lands for other than family purposes, and to have made demises of certain other Tarwad lands for unusual periods on no justifiable ground,— *Held*, that this did not constitute sufficient ground for removal of the Karanaven from his office, his conduct not having been such as to show that he could not be retained in his position without serious risk to the interests of the family. The possition of a Karanaven is not analogous to that of a mere trustee, officer of a corporation, or the like. The person to whom the Karanaven bears the closest resemblance is the father of a Hindu family. He should not be removed from his situation except on the most cogent grounds.

A similar observation made was Elaya Thamburatti v. *Valia Thamburatti*, A. S. 24 of 1876.

The solution of the difficulties which the state of families and property in Malabar will always create will not be assisted by bringing in the anarchy and insecurity which will always follow upon any attempt to weaken the natural authority of the karanaven. (*Eravanni Revivarman* v. *Ittaan Revivarman*, 1 M. 153.)

11. ——— A Karanaven who appoints a junior Anandiraven as his agent to manage part of the Tarwad property, collect rent &c. can, on behalf of the Tarwad revoke this authority at any time and take the management into his own hands. (*Govindan* v. *Kannaran*, 1 M. 351)

12. ——— Suit to obtain a declaration that the lands mentioned in the plaint formed the common property of the Tarwad of which the plaintiff was karanaven and to have the revenue register of those lands transferred to the plaintiff's name. The plaint alleged that the lands in question were the private acquisitions of three of the deceased members of the Tarwad, of whom the last in whose name the lands were last assessed on becoming Karanaven of the Tarwad, applied to the Sub Collector to have the registry of those lands transferred to the names of his own nephew, the first and second defendants; the plaintiff protested and was referred to a Civil suit to obtain a declaration that the registry could not be transferred. *Held*, that the plaintiff was entitled to the declaration

sued for, as it would enable him to go to the Collector for substantial relief in the shape of the transfer of registry to his name, but that the relief sought for could not be granted by the Courts as the Revenue Authority was not a party to the suit. (*Chandu* v. *Chathu Nambiar,* 1 M. 381.)

13. ——— A decree against a Karanaven is binding upon the members, though not parties to the suit, in the absence of fraud or collusion. A Karanaven is not a mere trustee, nor do the rules of courts of Equity as to the necessity of making *cestiu que trusts* parties to suits against trustees by strangers apply to the case of a Karanaven and the members of the Tarwad.

In Karanaven is vested actually (though in theory in the females) all the property movable and immovable, belonging to the Tarwad. It is his right and duty to manage alone the property of the Tarwad, to take care of it, to invest it in his own name (if it be movable) either on loans on Kanom or other security, or by purchasing in his own name lands, and to receive rents of lands. He can also grant the land on Kanom or on Otti mortgage. He is not accountable to any member of the Tarwad in respect of the income of it, nor can a suit be maintained for an account of the Tarwad property in the absence of fraud on his part. He is entitled in his own name to sue for the purpose of recovering or protecting property of the Tarwad in his own name. None of his acts in relation to the above matters can be legally questioned by the Tarwad if he has acted *bona fide.* If any of his acts have been done *mala fide* they can be questioned by the members of the Tarwad, and he may be removed for *mala fides* in his acts, or for incompetency to manage and other causes. He is interested in the property of the Tarwad, as a member of it, to the same extent as each of the other members. All the members, including the Karanaven are entitled to maintenance out of the Tarwad property. His management, may not be as prudent or beneficial as that of another manager would be but unless he acts *mala fide,* or with recklessness or utter incompetency, he cannot be removed from such management.
Almost the only restraint on him in such management is that he, cannot alienate the lands of the Tarwad except with the assent of the senior Anandiraven, or, in certain cases, of others of the Anandiravens. (*Varanakot Narayanan Namburi* v. *Varanakot Narayanan Namburi,* 2 M. 328.)

14. ——— The reasons for the removal of a Karanaven should be such as to satisfy a court that he could not be retained in his position without serious risks to the interests of the family. The facts such as intemperate habits, frequent absence from his Tarwad, contracting debts, the extraordinary procedure of putting the collection of the rents in the hands of third parties, will afford grounds for the removal of a Karanaven. (*Raman Nambiar.* v. *Krishnan Nambiar,* S A. 712 of 1877.)

15. ——— The grant of a very improvident lease following on a course of conduct pursued for some years, in which interests of the Tarwad were persistently disregarded, is sufficient ground for removing a Karanaven from the management of the Tarwad property. *Eravanni Revivarman* v. *Ittappu Revivarman,* 1, M 153, mentioned above under "Karanaven" approved.

A court has no power to confer on Karanavens larger powers than such as are sanctioned by usage. If such powers are insufficient to secure to Tarwads the full enjoyment of their estates, or if they are limited as to interpose obstacles to the establishment of new industries, the extention of such powers must be sought from the Legislature. (*Kunhamod Hajee* v. *Kuttiath Hajee, and Tod* v. *Kunhamod Hajee,* 3 M. 169.)

16. ——— A Court removing a Karanaven in office cannot impose on him certain restrictions. It must either pronounce him unfit for his office and dismiss him from it, or it must allow him to exercise the ordinary functions of a Karanaven unless he consents to surrender them. (*Raman Vydiar* v. *Ambu Vydiar,* S. A. 766 of 1880.)

17. ——— Karanaven is the proper person to decide what family ceremonies are, and what are not, obligatory. The junior members could only dispute his authority if the nonperformance of the ceremonies involved social disgrace. (S. A. 117 of 1880.)

18. ——— Karanaven can resume possession of the property alloted for maintenance of the members, and redistribute it or make arrangements for their maintenance. (S. A. 450 of 1881.)

19. ——— A suit for the removal of a Karanaven on the ground of misfeasance is incapabe of valuation and falls under Sec. 6. Art 17, Schedule II of the Court Fees Act 1870. (*Govindan Nambiar* v. *Krishnan Nambiar,* 4 M. 146.)

20. ——— A Karanaven having a right at any time to demand restoration of the Tarwad property in the hands of the Anandiraven is not debarred by Section 13 or Section 43 of the Code of Civil Procedure from bringing the second suit to recover lands in the wrongful possession of an Anandiraven, either by the fact that in a former suit between the same parties the Karanaven only laid claim to some of the lands sued for, or by the fact that the former suit was dismissed upon the joint petition of the parties, alleging a compromise and a surrender of the lands which, as a fact, were not surrendered but wrongfully retained by the Anandiraven. (*Kannan* v. *Tenju*, 5M. 1.)

21. ——— A certificate to collect debts under Act XXVII of 1860 may properly be refused to a Karanaven when the bulk of the debt to be collected is found to be due by the Karanaven himself under decree obtained against him by his predecessor. (*Madhava Panikar* v. *Govinda Panikar*, 5 M. 4.)

22. ——— Karanaven's authority to make alienations, See under "Alienation", *Kombi* v. *Lakshmi*, 5 M. 201.

23. ——— Karanaven's interest in family property, not his assets. See under "Uralen", *Ravi Varma* v. *Koman*, 5 M. 223.

24. ——— The question whether a decree against the Karanaven of a Nayar Tarwad or of a Nambudri Illom in Malabar is binding on the family is purely one of procedure.

The dectum in *Varanakot Narayanan Namburi* v. *Varanakot Narayanan Namburi*, 2 M. 328, that in the absence of fraud or collusion a decree against the Karanaven, as such, is binding on the Anandiravens of the Tarwad, is not warranted by any provision of the Code of Civil Procedure.

Every member of the Tarwad is entitled to be made a party, or to have notice, under Sec. 30 of the C. P. C. (1877), in any suit the object of which is to affect the Tarwad property.

Explanation 5 of Sec. 13 of the C. P. C. does not refer to *bona fide* defences, but to *bona fide* claims, and does not make a decree binding on a person not a party to it where the actual defendant was jointly interested with such person in the subject matter of the suit and defended the suit bona fide.

Hazir Ghazi v. *Sonamonee Dassee*, 6 C. 31, approved. (*Vasudeva* v. *Narayana*, 6 M. 121.)

25. ——— *Bona fide* acts of Karanaven: A landlord having obtained a decree against the Karanaven and senior Anandiravens, for the recovery of certain lands demised on perpetual lease to the Tarwad on the ground that the tenure was forfeited by the denial of the landlord's title by the Karanaven, the junior members of the Tarwad sued the parties to that decree to set aside the decree and also the forfeiture of the tenure, on the ground that the Karanaven had acted improperly in denying the title of the landlord. It was found that the Karanaven acted *bona fide* by denying his landlord's title and in defending the suit: *Held*, that the plaintiffs could not succeed. (*Gopalan* v. *Valia Thamburatti.*), 7 M. 87.)

26. ——— Karanaven's right to maintenance-See below under "Maintenance", *Narayani* v. *Govinda*, 7 M. 352.

27. ——— The ordinary powers of the Karanaven can be restricted by a family agreement to which he is a party, and if in breach of such agreement, the Karanaven makes an alienation to a stranger who has notice of the agreement, the Tarwad is not bound by the alienation. (*Kanna Pisharodi* v. *Kombi Achen*, 8 M. 381.)

28. ——— When the Karanaven has not been impleaded, as such, in a suit, and there is nothing on the face of the proceedings to show that it was intended to implead him in his representative character, Tarwad property cannot be attached and sold in execution of the decree even though it is proved that the decree was obtained for a debt binding on the Tarwad.

Although the property of a Tarwad may be attached and sold in execution of a decree when the Karanaven is sued as representative of the Tarwad, members of the Tarwad who are not parties to the proceedings and have not been represented in the manner prescribed by the Code of Civil Procedure are not estopped from showing that the debt for which the decree was passed was not binding on the Tarwad. (*Ittichan* v. *Velappan*, 8 M. 484.—Full Bench.)

29. ——— The senior female member of a Tarwad, who managed its affairs, instituted a suit on behalf of the Tarwad and in the capacity of Karanaven.

Held (1) that a female is not precluded from managing the affairs of her Tarwad where there is no male member in he r family capable of performing the duties of a Karanaven; and (2) that the junior members of the Tarwad were, in the absence of fraud shown, constructively parties to the suit, and were accor dingly bound by the decree passed in it. (*Subramanyan.* v. *Gopala*, 10 M. 223.)

30. ——— The Karanaven and senior female executed a hypothecation bond, on which a suit was brought against them asking for the sale of the Tarwad property. The defendents had represented the Tarwad in other suits, but were not in this case expressly sued in representative capacity. The plaintiff obtained a decree; *Held*, that the decree was binding on the Tarwad. (*Subramanyan* v. *Kali*, 10 M. 355).

31. ——— A sued for possession of certain shops belonging to a Tarwad, which had been attached in execution of a personl decree passed against the Karanaven in a suit on a private debt. In execution proceedings, an objection petition was put in stating that the shops were *stridhanam* and was rejected; and the order of rejection was not appealed against for one year. Respondents 1 to 4, the husband of the persons who put in the objection petition were in possession and were now sued for possession. The plaintiff was assignee of the purchaser at the execution sale. *Held*, that upon the facts found the plaintiff acquired nothing under the Court sale (*Achuta* v. *Mammavu*, 10 M. 357.)

32. ——— A Karanaven is not entitled of his own authority to set aside a family arrangement made on behalf of all the members of the Tarwad. (*Komu* v. *Krishna*, 11 M. 134.)

33. ——— A Karanaven having been sentenced to a term of imprisonment delegated to his son all his powers as Karanaven pending the expiry of his sentence: *Held*, that the delegation was *ultra vires* and void (*Chapppa Nayar* v. *Assen Kuttti*, 12 M. 219.)

34. ——— Karanaven removed, as blindness was a disqualification for his office. (*Kanaran* v. *Kunjan*, 12 M. 307.)

35. ——— The Karanaven and an Anandiraven were authorised by a Karar to manage the affairs of the Tarwad. By a decree obtained against them, a tarwad land was sold in execution. The plaint did not describe the defendents otherwise than by their

individual names, but the plaintiffs' claim was, *inter alia,* in respect of the breach of a contract by the defendants to put him into possession of certain land which was expressed to be „the jenm of the defendant's Tarwad". It was found in the present suit that the amount decreed in the prior suit constituted a debt due by the Tarwad: *Held,* the decree and the execution sale did not bind the Tarwad, (*Sankaran* v. *Parvathi,* 12 M. 434.)

36. ——— "The suit being against the Karanaven and senior Anandiraven is a strong presumption that it was intended to sue them as representing the Tarwad, and we do not consider that the fact that the senior Anandiraven was not described as such but only as nephew (Marumakan) of the Karanaven in any way weakens that presumption." (*Parathi Mathu* v. *Unichathan,* S. A. 1595 of 1889.)

37. ——— Suit to remove Karanaven for mismanagement to the extent of more than Rs 2500. The acts of mismanagement were really done by the present Defendant No. 1 as *de facto* Karanaven. The above suit was withdrawn with leave to sue again. The Defendant therein died and was succeeded by Defendant No. 1, against whom the plaintiffs brought the present suit in the Court of District Munsif (to which all the adult but none of the minor members were made parties), to obtain his removal from the office of Karanaven alleging against him the acts of mismanagement above referred to *Held,* (1) that the suit was not barred by the previous suit and was within the jurisdiction of the District Munsif, (2) that the minor members of the Tarwad were sufficiently represented on the record; (3) that the ground alleged supported the action (*Kunhan* v. *Sankara,* 14 M. 78).

38. ——— Karanaven has a right to resume at his will land allotted for maintenance; and can at his will make fresh arrangements as to the maintenance of individuals and Thavazhies. But where there has been a practical division of the family into two branches with separate property for a long period as 70 years it was held that the family arrangement could mot be set aside. (*Krishna Paniker* v. *Kamakshi Amma,* A. S. 1106 of 1890).

39. ——— Where properties have been assigned away for the

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maintenance and enjoyment of each branch, such branch has a right to deal with them under the arrangement made; and, until the family combact has been set aside, it is as much binding on the Karanaven as the whole Tarwad as its members (*Chathu Nambiar* v. *Keloth Kunhi* S. A. 744 of 1890)

40. ——— A Karanaven brings a suit in behalf of the Tarwad and it is dismissed: *Held*, his Anandiravens cannot bring a fresh suit in respect of the same matter unless the Karanaven is guilty of fraud or collusion. (*Sridevi Kettilamma* v. *Pokker Ummayya*, S. A. 813 of 1890).

41. ——— Karanaven executed a Kuzhi-Kanom lease of a land belonging to his Tarwad in 1846, and in 1861 his successor demised the same land to the same tenants in perpetuity. The present Karanaven sued in 1889 to recover possession of the land: *Held*, (1) that the prepetual lease, as being of an improvident character, was *ultra vires* and void; (2) that the original lease was not surrendered. [3] that the suit was not barred by limitation, the possession of the defendants never having been adverse to the plaintiff's Tarwad. (*Ramunni* v. *Kerala Varma Valia Raja*, 15 M. 166).

42. ——— A blind man, sued as Karanaven, to recover certain land. One of the defendants, who claimed but was not admitted to be a member of the Tarwad, and who asserted a right as Kanomdar to the land in question, pleaded that the plaintiff was not competent to act as Karanaven, or consequently to maintain the suit by reason of his blindness: *Held*, that the defendant was not entitled to raise this plea. (*Ukkandan* v *Kunhunni*, 15 M. 483).

43. ——— A suit by a person claiming to be the Karanaven for a declaration of his status as a member of the Tarwad with the defendants, should be valued for purpose of jurisdiction as a suit for possession of the whole Tarwad property. (*Ibrayen Kunhi* v *Komamutti Koya*, 2 M. L. J. 255).

44, ——— The question whether a Karanaven can put an end to a prior family arrangement can be considered only in a suit to which the members of the Tarwad and those of the branch are parties. (*Ittirarappa Kurup* v. *Chekkunni Kurup* S. A. 916 of 1891)

45. ——— In a case in which the Karanaven and the two

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senior Anandiravens were impleaded as representatives of the Tarwad: *Held,* that decree was binding on the Tarwad in the absence of proof of fraud. (*Koran* v. *Ramotty,* S. A. 1325 of 1891).

C. Maintenance.—

1. ——— Anandiraven's right to maintenance- See above, under "Anandiraven" (*Kunigaratu* v. *Arrangaden,* 2 M H. C. R. 12.

2. ———Though the general rule is that an Anandiraven cannot have separate maintenance, there may be rare exceptions, for instance the case in which the Karanaven has been the cause of quarrels which necessitated the Anandiraven leaving the family house. (*Peru Nair* v. *Ayyappan Nair,* 2M. 282.)

3. ——— A member of a Tarwad divided into Tavazhies with separate dwelling houses may claim to be maintained by the Karanaven in the house of the Thavazhi, to which he or she belongs (*Neellakandiyil Parvati* v. *Chattu Nambiar,* 4 M. 169.)

4. ——— A Karanaven is not justified in excluding an Anandiraven from participation in the income of the family property on the ground of misbehaviour or because the Anandiraven has other property of his own. (*Teyau Nair* v. *Ragavan Nair,* 4 M. 171).

5. ——— The fact that the member of a Malabar Tarwad has private mean does not affect his right to subsistence where the income of the Tarwad is sufficient to provide for all a suitable subsistence; but when the income is insufficient for this purpose the Karanaven must take into consideration the private means of each member. (*Thayu* v. *Shangunni,* 5 M. 71.
Theyan Nair v. *Ragavan Nair,* quoted above under "Maintenance 4 M. 171, distinguished.

6. ——— In North Malabar, the male members of a Nayar Tarwad, are by custom, entitled to receive from the Karanaven an allowance for the maintenance of their consorts and children while living in the Tarwad house. (*Parvathi* v. *Kamaran,* 6 M. 341.)

7. ——— A member of a Tarwad living in the Tarwad house cannot bring a suit against the Karanaven for a monthly allowance in money on the ground that the Karanaven does not make sufficient provision for his or her maintenance. (*Kunhammatha* v. *Kunhi KuttiAli,* 7 M. 233.)

8. ——— In suits for maintenance against the Karanaven, the practice of awarding one moiety of the net income of the Tarwad to the Karanaven is not authorised by law. (*Narayani* v. *Govinda*, 7 M. 352.

9. ——— The members of a Tarwad who choose to live outside the Tarwad house contrary to the wishes of the Karanaven are not entitled to separate maintenance. The circumstance that the Karanaven himself chose to occupy a separate building in the Tarwad compound would not justify junior members in setting up a separate establishment for themselves. (*Ramachen Nair* v. *Govinda Menon*, S. A. 233 of 1885.)

10. ——— Where a suit was brought by an Anandiraven living in the family house for maintenance against the Karanaven, who had left the family house, resided elsewhere, and neglected to maintain the plaintiffs: *Held*, that the plaintiffs were entitled to maintain the suit. — *Kunhammatha* v. *Kunhi Kutti Ali*, quoted above under "Maintenance", distinguished. (*Kesava* v. *Unikkanda*, 11 M. 307.)

11. ——— A member of a Tarwad having obtained a decree for maintenance against her Karanaven, assigned the decree to plaintiff who proceeded to execute it against the Tarwad property. The then Karanaven objected and his claim was allowed. In a suit by plaintiff to have it declared that he was entitled to execute the decree against the Tarwad property: — *Held*, that the plaintiff was entitled to execute the decree against the Tarwad property. (*Chandu* v. *Raman*, 11 M. 278.)

12. ——— Suit by 12 Anandiravens against the Karanaven for arrears of maintenance. The plaintiffs lived in a Tarwad house apart from the Karanaven, who did not allege that this arrangement was contrary to his wishes, but pleaded that he provided for them adequately: — *Held*, that the plaintiffs were entitled to a decree for a reasonable amount by way of maintenance, in computing which allowance should be made for the income of the Tarwad property in their possession. *Nallakandiyil Parvati* v. *Chattu Nambiar*, 4 M. 169, quoted above under "Maintenance, followed. *Chekkutti* v. *Pakki*, 12 M. 305.)

13. ——— The child of a Nair woman by a Brahmin with whom she consorted is entitled to an order for maintenance against him

under Sec 488 of the Criminal Procedure Code, 1882. (*Ayya Patter* v. *Kalyani Amma*, 3 M. L. J. 281.)

D. Self acquisition.—

1. ——— The self-acquired property of a member of a Tarwad, which, not being disposed of at the death of the acquirer, lapses into the property of the Tarwad, enures as assets of the deceased for the payment of his debts in the hands of the members of the Tarwad. (*Ryrappan Nambiar* v. *Kelu Kurup*, 4 M. 150.)

E. Tarwad property.

1. ——— Property assigned by the males of a Nair family for the support of their females is still family property and liable as such to be taken in execution of a judgment against the Karanaven. (*Parakkal Kondi Menon* v. *Vadakentil Kunni Penna*, 2 M. H. C. R. 41.)

2. ——— All acquisitions of any member which he has not disposed of in his lifetime form part of the family property. The acquirer, however may, during his lifetime hold, alienate at once, and encumber his self-acquisitions. S. A. 378 of 1863, affirmed:

A Karanaven in possession of the family funds is presumed to have made all acquisitions with them and for the benefit of the corporate body. But, such presumption is not irrebutable, and his alienation or charge of such self-acquisitions made during his lifetime may be valid. (*Kallati Kunju Menon* v. *Palat Erracha Menon*, 2 M. H. C. R. 162.)

3. ——— Tarwad property is inalienable, except in cases of absolute family necessity. In such cases, alienations will be upheld; but it lies upon the purchaser to make out with abundant clearness that the purpose was a proper one. The assent of the senior Anandiraven is some (but rebuttable) evidence that the purpose was proper. *Semble* that, considering the state of Hindu families, a purchaser would be affected with notice by much slighter evidence than a purchaser in other countries. (*Koyilothputenpurayil Manoki Koran Nayar* v. *Puthenpurayil Manoki Chandu Nayar*, 3 M. H. C. R. 294.)

4. ——— Tarwad property cannot be sold in execution of a decree to which the Karanaven is no party in his representative character. See above under "Karanaven" *Ittiachan* v. *Velappan*, 8. M. 484.

F. Tavazhi.

1. ——— The word "Tavazhi" has distinct several meanings.In the families of the princes all the houses have separate property and the senior in age of all the houses succeeds to the Royalty with the property specially devoted to it. This mode of succession may be regarded as rather due to public than to private law. Private families have sometimes adopted the same customs, but there is the strongest presumption against the truth of this in the case of a private family. Families becoming very numerous have been often split into various branches; in the language of the people "there is community of purity and impurity between them, but no community of property". In the only sense of the word with which the courts of justice are concerned, people so related are not of the same Tarwad. Where there are several houses bearing the same original Tarwad name, but with an addition, and there is no evidence of the passing of a member of one house to another, there is the strongest ground for concluding that this separation has taken place. (*Korapen Nayar* v. *Chenen Nayar*, 6 M. H. C. R. 411.)

2. ——— Of suits by the Karanaven of a Tavazhi, See *Velia Kaimal* v. *Velluthadatha Shamu*, 6 M. H. C. R. 401.

3. ——— When a member of a Tarwad in possession of lands acquired by former members of his Tavazhi, sets up an independent title to those lands, his possession becomes hostile to the Tarwad, and limitation begins to run against the Tarwad from that time. (*Kanara Paniker* v. *Ryrappa Paniker*, 3 M. 212.)

4. ——— Forty years separation is sufficient to provide division. (A S 55 of 1879.)

Tiyan.

1. ——— Where a Makkattayam man has married a Marumakkattayam lady, the issue would be entitled to their father's property in accordance with the rules of Makkattayam law, and to the property of this mother's Tarwad in accordance with the Marumakkattayam law. (*Chathunni* v. *Sankaran*, 8 M. 238.)

2. ——— A Community following the Makkattayam rule, must not be taken to be necessarily governed by the Hindu law of inheritance with all its incidents. Accordingly, when a member of the

Tiya community in Calicut following that rule, alleged and proved a custom that brothers succeeded to self-acquired property in preference to widows, it was held that the Court should give effect to it. (*Rarichan* v. *Perachi,* 15 M. 281.)

Will.

1. ——— Self - acquisition undisposed of during the life-time of the testator will not pass under will. (*Mannen* v. *Kelappen* S. A. 534 of 1878. 1 M. L. R. Part III. 25.)

2. ——— The last surviving member of a Tarwad can make a valid testamentary disposition of the Tarwad property. (*Alami* v. *Komu,* 12 M. 126.)

4. ——— A Karanaven executed a Vasyat making a gift of his life interest in certain self-acquired property to come into operation at once. The members of the Tarwad acquiesced in this disposition of the property. *Held,* that the time for a suit to recover the property by the Karnavan's successor in office began to run for purpose of limitation from the death of the donee. *Quaere,* whether the principle law down in *Alami* v. *Komu* (see above) would apply in the case of will made by a member of a (Tarwad having heirs in the Tarwad. *Kuttyassan* v. *Mayan,* 14 M. 495.)

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